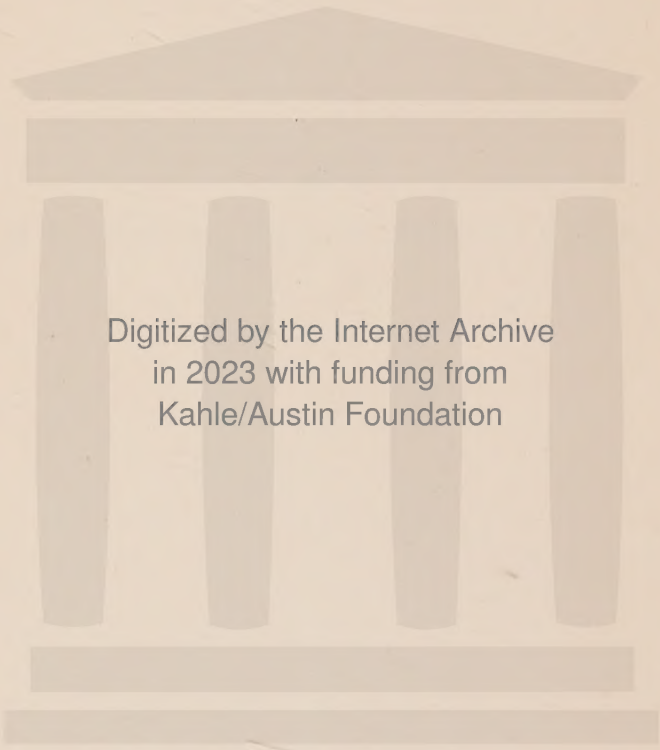


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**THE
HEART OF THE RAILROAD PROBLEM**



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THE HEART OF THE RAILROAD PROBLEM

THE HISTORY OF RAILWAY DISCRIMINATION IN THE
UNITED STATES, THE CHIEF EFFORTS AT CONTROL
AND THE REMEDIES PROPOSED, WITH
HINTS FROM OTHER COUNTRIES

BY

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BOOKS," "THE CITY FOR THE PEOPLE," "THE RAILWAYS
THE TRUSTS, AND THE PEOPLE"

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PREFACE

THIS work is one of the consequences of a conversation years ago with Dr. C. F. Taylor, of Philadelphia, editor and publisher of *The Medical World* and of Equity Series. The doctor said that Equity Series should have a book on the railroad question. The writer replied that there was room for a book dealing with the political, industrial, and social effects of different systems of railway ownership and control. A plan was adopted for a book, to be called "The Railways, the Trusts, and the People," which is now on the press of Equity Series. For the preparation of this work the writer travelled through nine countries of Europe and over three-fourths of the United States, studying railways, meeting railroad presidents and managers, ministers of railways, members of railway commissions, governors, senators, and leading men of every class, in the effort to get a thorough understanding of the railway situation. He also made an extensive study of the railroad literature of leading countries, and examined thoroughly the reports and decisions of commissions and courts in railroad cases in the United States.

As these studies progressed, the writer became more and more convinced that the heart of the railroad problem lies in the question of impartial treatment of shippers. The chief complaint against our railroads is not that the rates as a whole are unreasonable, but that favoritism is shown for large shippers or special interests having control of railways or a special pull with the management. This book

consists, in the main, of the broad study of railway favoritism, which was made as a basis for the generalizations outlined in the brief chapter on that subject in "The Railways, the Trusts, and the People," — one of the thirty chapters of that book. This study reveals the facts in reference to railway favoritism or unjust discrimination from the beginning of our railway history to the present time, discloses the motives and causes of discrimination, discusses various remedies that have been proposed, and gathers hints from the railway systems of other countries to clarify and develop the conclusions indicated by our own railroad history.

Special acknowledgments are due to Dr. Taylor, who paid a part of the cost of the special investigations on which the book is based and has taken a keen interest in the progress of the work from its inception, and also to Mr. Ralph Albertson, who has worked almost constantly with the writer for the past eight months and more or less for two years before that, and has rendered great assistance in research, in consultation and criticism, and in the checking and revision of proof.

FRANK PARSONS.

Boston, March, 1906.

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THE HEART OF THE RAILROAD PROBLEM

CHAPTER I.

THE LAW AND THE FACT.

It is a principle of the common law that common carriers must be impartial. "They cannot legally give undue or unjust preferences, or make unequal or extravagant charges. . . . They are bound to provide reasonable and sufficient facilities. They must not refuse to carry any goods or passengers properly applying for transportation. . . . They have no right to grant monopolies or special privileges or unequal preferences, but are bound to treat all fairly and impartially."¹ That is the rule of the common law which represents the crystallized common-sense and practical conscience of the Anglo-Saxon and every other civilized race. The legal principle that a common carrier must be impartial was established long before the Interstate Commerce Act was passed, or the Granger laws enacted, — yes, before railways or steamboats were born. They inherited the family character and the family law. It has been applied to them in innumerable cases. There is a solid line of decisions from the infancy of the English law to the present time. Constitutional provisions and State and Federal statutes have been passed to affirm and

¹ See *New England Exp. Co. v. Maine Central R. R.*, 57 Me. 188; *Fitchburg R. R. v. Gage*, 12 Gray (Mass.), 393; *Kenny v. Grand Trunk R. R.*, 47 N. Y. 525; *Messenger v. Penn. R. R.*, 8 Vroom (N. J.), 531; *Chicago, etc., R. R. v. People*, 67 Ill. 11; *Wheeler v. San Francisco R. R.*, 31 Cal. 46.

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enforce the rule. The railroads themselves declare the rule to be right. And yet, in spite of the railway conscience and the common law, the universal sense of justice of mankind, and the whole legislative, executive, and judicial power of the government, the rule is not obeyed. On the contrary, disregard of it is chronic and contagious, and constitutes one of the leading characteristics of our railway system. In spite of law and justice our railway practice is a tissue of unfair discrimination, denying the small man equal opportunity with the rich and influential, and breaking the connection between merit and success.

The railways unjustly favor persons, places, and commodities, and they do it constantly, systematically, habitually. If every instance of unjust discrimination that occurs to-day were embodied in human form and the process were continued for a year,² the outlaw host would dwarf the Moslem hordes that deluged southern Europe in the days of Charles Martel, outnumber many fold the Grand Army of the Republic in its palmyest days, and, shoulder to shoulder, the dark and dangerous mob would reach across the continent, across the ocean, over Europe and Asia, and around the world.

The railways discriminate partly because they wish to, and partly because they have to. The managers favor some interests because they are linked with the interests of the railways or the managers, and they favor some other interests because they are forced to. The pressure of private interest is stronger than the pressure of the law, and so the railroad manager fractures his conscience and breaks the statutes and common law into fragments.

² Pass discrimination alone, it is estimated, amounts to some 200,000 free transits a day, or over 70 millions in a year. And as for freight discriminations, the reader who follows this history through will see that like the leaves of the forest they defy computation. Just a hint may be given here. Every day that one of the 300,000 private cars is carried at the present mileage rates, a discrimination is made in favor of the owner of the private car, — a hundred millions of unjust discriminations, possibly, in this one item.

CHAPTER II.

PASSES AND POLITICS.

ONE of the most important forms of discrimination is the railroad pass. Many persons of wealth or influence, legislators, judges, sheriffs, assessors, representatives of the press, big shippers, and agents of large concerns, get free transportation, while those less favored must pay not only for their own transportation, but for that of the railway favorites also.

A farmer and a lawyer occupied the same seat in a railroad car. When the conductor came the farmer presented his ticket, and the lawyer a pass. The farmer did not conceal his disgust when he discovered that his seat-mate was a deadhead. The lawyer, trying to assuage the indignation of the farmer, said to him: "My friend, you travel very cheaply on this road." "I think so myself," replied the farmer, "considering the fact that I have to pay fare for both of us."

The free-pass system is specially vicious because of its relation to government. Passes are constantly given to public officials in spite of the law, and constitute one of the most insidious forms of bribery and corruption yet invented. I have in my possession some photographs of annual passes given by the Pennsylvania Railroad in 1903, 1904, and 1905 to members of the State Legislature, and the Common Council of Philadelphia.

The Constitution of Pennsylvania, Section 8 of Article 8, says: "No railroad, railway, or other transportation com-

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pany, shall grant free passes, or passes at a discount, to any persons except officers or employees of the company."

The question is whether the members of the Legislature are employees of the Pennsylvania Railroad.

Recently the Pennsylvania Railroad gave notice that after January 1, 1906, no free passes would be issued except to employees. As we have seen reason to believe, this may still include members of the Legislature, and even if the order should happen to be enforced according to the common acceptation of the word "employees," there are plenty of ways in which free transportation can be given to men the railroad management deems it desirable to favor. Railroads have made such orders before, and in every case the fact has proved to be that the order simply constituted an easy method of lopping off the overgrown demand for passes, a ready excuse for denying requests the railroad does not wish to honor, without in the least interfering with its power of favoring those it really wishes to favor. In cutting off passes under said order to multitudes of city officials in Pittsburg lately the Pennsylvania railroad officers stated that the demand had become so great that those having free rides were actually crowding the paying passengers on many of the trains. The *Philadelphia North American* declared that in that city every big and little politician expected free passage when he requested it, and that there was no ward heeler so humble that he might not demand transportation for himself and friends to Atlantic City, Harrisburg, or any other point on the Pennsylvania line. The *Springfield Republican* said: "It does not appear to be recognized, in the praise given to the present action of the railroad company, how great an impeachment of its management the old order constituted. We are told that passes were issued literally in bundles for the use of political workers, big and little."

We watched with much interest to see what the railroad would really do when the time for full enforcement of the

order came. In Pennsylvania, as was anticipated, the order has been used as a basis for refusing passes to the overgrown horde of grafters who have feasted so long at the Pennsylvania's tables. The railway does not want anything this year in Pennsylvania that the grafters can give it, and it is an excellent opportunity to punish the Pittsburg politicians for allowing the Gould lines to enter the city. But in Ohio the situation is different, and, in spite of the recent order, the time-honored free passes have been sent to every member of the Ohio Legislature. A press despatch from Columbus, January 1, says: "One of the notable events that marked the opening of the general assembly to-day was the unexpected arrival of railroad passes for every member. The Pennsylvania, first to announce that the time-honored graft would be cut off, was the first to send the little tickets, and the other lines followed suit."

The Pennsylvania is not alone in its delicate generosity to legislators and other persons of influence. The *practice* is *practically* universal.¹ From Maine to California there is not a State in which the railroads refrain from giving passes to legislators, judges, mayors, assessors, etc. And the roads expect full value for their favors. Some time ago a member of the Illinois Legislature applied to the president of a leading railroad for a pass. In reply he received the following:

"Your letter of the 22nd to President —, requesting an annual over the railroad of this company, has been referred to me. A couple of years ago, after you had been furnished with an annual over this line, you voted against a bill which you knew this company was directly interested in.

¹ The New York Central, Baltimore and Ohio, and some other lines announced the same purpose as the Pennsylvania in respect to passes after January 1, 1906, but with them as with the Pennsylvania it appears to be a case of more careful discrimination in the use of discrimination, and an appreciation of the fact that it is very important to make a good impression on the public mind just now, in view of the widespread demand for drastic legislation in the direction of railroad regulation.

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Do you know of any particular reason, therefore, why we should favor you with an annual this year?"

The railroads give passes to legislators and public officials not, as a rule, in any spirit of philanthropy or respect for public office, but as a matter of business; and if a legislator does not recognize the obligation that adheres to the pass, the pass is not likely to adhere to him in subsequent years.

In many cases the pass is the first step on the road to railroad servitude. Governor Folk said to me: "The railroads debauch legislators at the start by the free pass. It is a misdemeanor by the law of this State to take such a favor.² But it seems so ordinary a thing that the legislator takes it. He may start out with good intentions, but he takes a pass and then the railroad people have him in their power. He has broken the law, and if he does not do as they wish they threaten to publish the number of his pass. He generally ends by taking bribe money. He's in the railroad power anyway to a certain extent, and thinks he might as well make something out of it. In investigating cases of corruption I have found that in almost every instance the first step of the legislator toward bribery was the acceptance of a railroad pass."

At the annual dinner of the Boston Merchants' Association, January, 1906, Governor Folk said: "One of our greatest evils is the domination of public affairs by our great corporations, and we will never get rid of corporation dominance till we get rid of the free pass. That is the insidious bribe that carries our legislators over the line of probity. First seduced by the free pass, destruction is easy. No legislator has a right to accept a free pass; no more right than to accept its equivalent in money." Even the laws against the free pass, Governor Folk says, often play into the hands of the railways and emphasize and

² A number of the States have laws against passes. The Interstate Commerce law forbids them. And they are always against the moral law whether they run beyond the State line or not.

fasten corruption upon the State by putting legislators and officials at the mercy of the railroads in consequence of the fact that the taking of a pass is a violation of law, so that the railway has a special hold upon the donee as soon as the favor is accepted. This is likely to be the effect unless the law is so thoroughly enforced as to prevent the taking of passes, which is very difficult and very seldom achieved.

Governor Folk is doing his best to abolish the pass evil. It used to be a common thing for officials of all grades to ride on passes. And any influential person in Jefferson City could get a pass by seeing a member of the House or Senate, who would send a note to Colonel Phelps and a pass would be forthcoming. Now the legislators decline to accommodate their friends by making these little requests, for the matter might come to the ear of Governor Folk. Moreover the government employees in Missouri have been cut off from these railroad "courtesies." The statute does not apply to appointive officers, but the Governor does not intend that his department shall be honeycombed with railroad influence if he can help it. One of the officers of a subordinate branch of the government went to him and asked him about the matter. "I do not want a pass for myself," said the interrogator, "but Mr. W. told me that he would like for me to see you before he accepted a pass and see if you had any objections. And I want to add, Governor, that it has always been the custom for the employees in this department to use free passes." Governor Folk's countenance lost its smile for the moment, as he said very slowly and sternly: "Tell the employees of your department that if any of my appointees ride upon railway passes they will be instantly discharged."

These insidious bribes in the guise of courtesy and honor for position — these free passes which Governor Folk denounces as the first steps to corruption — are prevalent in all our States. Even in honest old Maine, the frosty forest

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State, I found the railroad pass in full bloom. Speaking to a joint committee of the House and Senate at Augusta a few months ago, I exhibited a number of photographs of passes given to legislators and councilmen by one of our big railroads. The members examined these photos with much interest and some facetious remarks. On the way into town a famous lobbyist who has long and close acquaintance with the legislature of Maine laughed till the tears ran down his cheeks over the memory of the scene, puffing out between his explosions the explanation of his merriment: "Every one of those fellows has a railroad pass in his own pocket." Inquiry in other directions tends to confirm his statement.

It is hardly possible to imagine that the ordinary legislator or judge can be entirely impartial in reference to a railroad bill or suit when he is under obligation to the railroads for past favors and hopes for similar courtesies in the future.

When a judge finds that jurors in a railroad case have accepted passes from the railroad he discharges the jurors as unfit for impartial service,³ yet that same judge may have in his pocket an annual pass over all the lines of the road that is plaintiff or defendant in the case.

Some railroad presidents and managers have told me that passes are given as mere courtesies and are not intended to influence the conduct of officials. This may be true in some cases, but as a rule the railroads do not give charity; but expect favor for favor, and value for value, or multiplied value for value. Railroad men have sometimes admitted to me that the psychology of the pass is closely related to

³ In one case it appeared that a leading railroad attorney had been for years in the habit of supplying jurors with passes. Opposing counsel brought out the fact that all the jurors in the case on trial had accepted passes from the railroad company which was the defendant in the case, and that to have an equal chance for justice his client would have to give each juror \$50 to offset the railroad gifts. The judge discharged the whole jury.

that of the bribe, and that they sought and obtained political results from the distribution of transportation favors. And aside from such admissions the evidence on the facts is overwhelming.

A prominent judge who had been on the bench for years in one of our best States and had always received passes from various railroad companies, found at the beginning of a new year that one of the principal railroads had failed to send him the customary pass. Thinking it an oversight he called the attention of the railroad's chief attorney to the fact. "Judge," said the lawyer, "did you not recently decide an important case against our company?" "And was not my decision in accordance with law and justice?" said the judge. The attorney did not reply to this, but a few days later the judge got his pass. After some months it again became the duty of the judge to render a decision against the company. This second act of judicial independence was not forgiven. The next time he presented his pass the conductor confiscated it in the presence of many passengers and required the judge to pay his fare.

The railroad commission in one of our giant States says the fact "that for the most part passes are given to official persons for the purpose of influencing official conduct, is made manifest by the fact that they are not given to such persons except while they hold official positions."⁴

The president of an important railroad is stated to have said that he "saved his company thousands of dollars a year by giving annual passes to county auditors." And a man who had been auditor for many years said that the taxes of the — railroad company were increased about \$20,000 a year because it was so stingy with its passes.⁵

⁴ Condensation of statement of Texas Railroad Commission's Report for 1898, p. 17. See, further, "Bribery by Railway Passes," *North American Review*, 138, p. 89; and *Public Opinion*, 26, p. 167, Feb. 9, 1899: "The Pass Evil in Three States" (Indiana, Minnesota, and Washington).

⁵ "Railway Passes and the Public," *Forum*, 3, p. 392.

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Members of legislatures and of Congress have told me that after voting against railroad measures the usual passes were not forthcoming.

A little while before the introduction of the rate legislation now pending, in pursuance of President Roosevelt's regulative policy, a congressman from the Far West was visiting with us. He had free transportation for himself and family anywhere in the United States any time he wanted it. A lady in the family asked him if it was the same way with the rest of the congressmen, and he said "Yes." I have in my notes conversations with senators and representatives from eighteen States, and all of them stated, in reply to my questions, that passes were an established and regular part of the perquisites of a member of Congress.

But since the Esch-Townsend bill for the fixing of rates by a government commission came on deck, I understand that the congressmen who supported it are learning the lesson conveyed in the pass-denying letter above quoted, as some of the railroads are refusing all the requests of such congressmen for free transportation. The president of one of these railroads is reported to have said: "I never was in favor of granting political transportation, and now I have a good opportunity to cut off some of these deadheads. Transportation has been given them in the past on the theory that they were friends, but when we needed friends they were not there."

This, however, is only a passing phase—an emergency measure to punish a few congressmen who have shown so little appreciation of the right of the railroads to make the laws affecting transportation, that they actually voted for what they deemed right or for what the people desired, rather than for what the railroads wanted.

Aside from such little eddies, the great stream of dead-headism flows on as smooth and deep as ever. The people take the thing so much as a matter of course that it has

been a constant cause of surprise to passengers on the New York, New Haven, and Hartford Railroad to see Governor Douglas pay his fare day by day as he travelled to and fro on an ordinary commutation ticket.

A prominent judge of Chicago tells me that for years the leading railroads entering that city have sent him annual passes without request. I found the same thing in Denver, San Francisco, New York, Boston, and nearly everywhere else I have been in this country. The mayor of one of our giant cities told me this very morning that the principal railroads sent him annuals but he returned them. It would be better if he would turn the next lot over to a publicity league or put them in a museum.

In many cases the railroads are practically forced to give passes. A. B. Stickney, President of the Chicago and Great Western Railroad was asked by the Industrial Commission⁶ about the giving of passes to members of the judiciary of Minnesota and Illinois. President Stickney said, "If any of them ask for transportation, they get it; we don't hesitate to give to men of that class if they ask for passes; we never feel at liberty to refuse."

"Is there any good reason why a judge who gets a good salary should have a pass—any greater reason than why John Smith should have a pass?"

"That depends," said President Stickney, "on what you call a good reason. . . . Twenty-five years ago I had charge of a little bit of a road that was a sort of subordinate of a larger road.

"I had occasion to visit the president of the superior road about something, and he said: 'Mr. Stickney, I see that the sheriff of this county has a pass over your road. I should like to know on what principle you gave that sheriff a pass.'

"'I did it on the principle that he was a power, and I was afraid to refuse him,' I said.

⁶ Vol. iv, pp. 456-457.

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“‘Well,’ said he, ‘I refused him.’

“‘You will wish you had n’t before the year is over,’ I replied.

“Sometime afterwards, and during the year, I went into the office to see the superintendent, but he was not in; I went into the general freight agent’s office, and he was not in; I went into the general manager’s office, and he was not in. So I then went into the office of the president and said, ‘What kind of a road have you got? Your superintendent is not here, your general freight agent is not here, and your general manager is not here.’

“He hung his head down and said: ‘Do you remember that conversation we had about that sheriff’s pass? He’s got all those men on the jury and has got them stuck for about two weeks.’”

Q. “That answer seems to indicate that railroads would be afraid to refuse for fear of the penalties?”

A. “I think the railroads find there is a class of men that it is to their interest not to refuse if they ask for passes.”

Van Oss says that at one time in this country half the passengers rode on passes.⁷ That seems incredible. There is no doubt, however, that the pass evil was enormous before it was checked by State and Federal legislation, and still prevails to an astonishing extent. Six years after the Interstate Act prohibited all preferences, and twenty years after the State crusade against passes and other discriminations began, C. Wood Davis, a railway auditor of large experience, and an executive officer having authority to issue passes, stated that “ten percent of the railway travel of this country is free, the result being that the great mass of railway users are yearly mulcted some \$33,000,000 for the benefit of the favored few. No account of these passes is rendered to State, nation, or the confiding stockholders.”⁸

⁷ American Railroads as Investments, p. 30.

⁸ See C. Wood Davis’ article in *The Arena*, vi (1891), pp. 281-282.

If ten percent still ride deadhead, as is quite probable, the resulting tax upon paying railway users is now over \$50,000,000 a year. The effect of legislation has been to give the railways an excuse for shutting off the less influential of the former deadheads, while the big people ride free in spite of the law.⁹

The Hon. Martin A. Knapp, Chairman of the Interstate Commerce Commission, says: "A gentleman told me that on one occasion he came from Chicago to Washington along in the latter days of November, and every passenger in the Pullman car, besides himself, was a member of Congress or other Government official, with their families, and that he was the only passenger who paid a cent for transportation from Chicago to Washington, either for his passage or for his Pullman car."¹⁰

Paul Morton says: "Passes are given for many reasons, almost all of which are bad. . . . Passes are given for personal, political, and commercial reasons."¹¹

Big shippers and their agents get them as a premium on or inducement to shipments over the donating railroad. When we went to the St. Louis Exposition we had to pay our fare, but the shipping manager of a large firm I have in mind was given free transportation for himself and family, though he was abundantly able to pay. In fact, those best able to pay ride free, while the poor have to pay for the rich as well as for themselves.

One way in which the railway managers evade the Interstate Commerce Law, in giving passes to large shippers and others, is to designate the recipients as employees of their own or other companies.¹²

President Stickney, of the Chicago and Great Western Railroad, said in a recent address before the Washington Economic Society :

⁹ See the evidence cited below.

¹⁰ Report of U. S. Industrial Commission (1900), iv, p. 135.

¹¹ Testimony before U. S. Industrial Commission (1900), iv, p. 490.

¹² *Forum*, 3, p. 392.

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“The law which makes it a misdemeanor for any individual not an officer of a railway company to use a pass was enacted by Congress and approved by the President 18 years ago, and as an individual rule of action it was ignored by the congressmen who passed it and by the President who approved it; and subsequent congressmen and presidents, with rare exceptions, have ignored its provisions. Travelling, they present the evidence of their misdemeanor before the eyes of the public in a way which indicates no regard for the law. The governors of the States, many of the judges, — in short, all officialdom from the highest to the lowest, — the higher clergy, college professors, editors, merchants, bankers, lawyers, present the evidence of their misdemeanor in the same manner.”

As we shall see presently, there are other forms of passenger discrimination, such as the free private car, the rate war, etc.

But neither of these nor the selling of tickets below the normal rates through scalpers, constitutes so inequitable or dangerous a form of discrimination as the pass system. As Hadley says: “The really serious form of passenger discrimination is the free-pass system. It is a serious thing, not so much on account of the money involved, as on account of the state of the public morals which it indicates (and develops). When passes are given as a matter of mere favoritism, it is bad enough. When they are given as a means of influencing legislation, it is far worse. Yet this last form of corruption has become so universal that people cease to regard it as corrupt. Public officials and other men of influence are ready to expect and claim free transportation as a right. To all intents and purposes they use their position to levy blackmail against the railroad companies.”¹³

Other leading countries are not afflicted with this pass disease to any such extent as we are; some of them do not

¹³ Railroad Transportation, p. 109.

have the malady at all. In France and Italy I was offered passes, but the government roads of Austria, Germany, and Belgium not only did not offer passes, but refused to grant them even when considerable pressure was brought to bear.¹⁴ The Minister of Railways in Austria informed me that he had no pass himself, but paid his fare like any ordinary traveller. No amount of personal or official pull could secure free transportation. The same thing I found was true in Germany. Only railway employees whose duty calls them over the road have passes. The Minister pays when he travels on his own account. And the Emperor also pays for his railway travel. It is the settled policy of government roads in all enlightened countries to treat all customers alike so far as possible, concessions being made, if at all, to those who cannot afford to pay or who have some claim on the ground of public policy: as in South Africa where children are carried free to school; in New Zealand, where men out of work are taken to places where they may find employment, on credit or contingent payment; and in Germany and other countries, where tickets are sold at half price for the working-people's trains in and out of the cities morning and night.

Even in England, though the roads are private like ours, the working-people have cheap trains, and public officials pay full fare. The King of England pays his fare when travelling, and if he has a special train he pays regular rates

¹⁴ In order to test the attitude of the government roads, I did my best to get passes, trying first through the American ambassadors in Vienna, Berlin, and Brussels, and afterward by direct appeal to the railway management. But it was of no use, although I had a letter from the Chairman of the United States Industrial Commission saying that I had rendered the government valuable service in connection with the work of the Commission, and that any courtesies shown me or assistance afforded me in my researches would be a public service. I had other strong letters from men of high distinction in the United States and England, and our ambassador at Berlin had been president of my alma mater when I was in college, and was specially friendly and helpful; but I was assured that no amount of influence or pull could secure a pass or any other personal favor on the State railways.

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for that too. Members of Parliament also and minor public officers pay for transportation. Passes are not given for political reasons. The law against this class of discriminations is thoroughly enforced. But in this country not only members of Congress and other public officials, but some of our presidents even have subjected themselves to severe criticism by accepting free transportation in disregard of Federal law.

CHAPTER III.

PASSENGER REBATES AND OTHER FORMS OF DISCRIMINATION IN PASSENGER TRAFFIC.

IN addition to the passengers who travel free on passes, there are many who have free transportation in other forms. One method of favoritism is the payment of rebates, which are in use in the passenger departments as well as in the freight departments of our railroads. Passenger rebates are repayments of a part or the whole of the amounts paid by favored parties for tickets or mileage. For example, large concerns that employ travelling men buy ordinary passenger mileage books, and when the mileage is used the cover of the book is returned to the railroad and a refund is made.¹ In the investigation of the Wisconsin railroads, instituted by Governor La Follette in 1903, it was found that every railroad of importance in the State had been paying passenger rebates in large amounts every year for the whole six years that were covered by the search. From 1897 to the end of 1903 the Chicago, Milwaukee and St. Paul refunded \$170,968 in passenger rebates, the Chicago and Northwestern refunded \$614,361; adding the Chicago, St. Paul, Minneapolis and Omaha, the Wisconsin Central, and the "Soo Line," the total passenger rebates paid by the five roads named in the said time was over \$972,000.

In the case of some favored shippers in Wisconsin it was found that the railroads secretly refunded the entire

¹ See *McClure's Magazine*, December, 1905, where Ray Stannard Baker has stated the leading facts.

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original cost of the mileage books bought by the said shippers for themselves or their agents, or \$60 per book. So that these favored houses "were able to send out their entire force of travelling men without paying one cent of railroad fare, while their competitors paid full fares."

One of these Wisconsin concerns, the Northern Grain Company, received from the Northwestern Railroad alone \$151,447 rebates in five years, or over \$30,000 a year, partly as refunds on the passenger mileage books of their travelling men and partly as cash rebates on their business. The president of the Northern Grain Company is O. W. Mosher, who was a State senator in 1901 and 1903 and fought the railroad reforms proposed by Governor La Follette. He vigorously defended "individual liberty" and the right of the railroads to "control their own property," and it is easy to understand his earnest opposition to railroad regulation since it has come out that "individual liberty" and railroad *laissez faire* meant \$30,000 a year to his company.

The Deadhead Passenger Car.

Along with the less-than-carload lots of deadheads travelling on trip passes or annual passes, or transportation with a rebate attachment, there are carload lots going deadhead in private passenger cars.

In a tour to the Pacific coast and back a score of private cars at different times were attached to the various trains I was on. A friend who went a year or so later counted nine private cars on his journey in California, four of them being attached to the same train at the same time, and in the whole 9000 miles he travelled the total number of private cars ran up to 54. Any trust or railroad magnate or governor of a State may have a private car with his retinue, while the lesser deadheads ride in the ordinary cars or Pullman coaches; and the common people pay for it all.

Ticket Scalping.

For many years the railroads aided and abetted the ticket scalpers, paying commissions on the sale of tickets,² or making arrangements so that scalpers could get tickets from the railway offices for less than the regular prices. Railroad offices have been known to sell tickets systematically to scalpers at 33, 50, and 66 percent off, or $\frac{2}{3}$, $\frac{1}{2}$, and $\frac{1}{3}$ of the regular rates. The scalper shared the discount with the passenger, and the railway prevented some other line from getting the traffic.

In some cases scalpers induced conductors not to cancel tickets taken up, so that they could be resold in the scalping offices, the profits being divided with the conductors. In 10 States where statutes were passed against scalping, the brokers and the railroads practically nullified the law. And by collusion with these brokers the railroads secretly violated the Interstate Commerce Act.

A mass of facts upon this subject appears in the expert testimony pro and con before committees of both Houses of Congress, notably in January, 1898. It was shown that at that time 346 newspapers, substantially all the railway and steamship passenger lines of the United States, the laws of 10 States, the long example of Canada, the resolutions of numerous national, State, and mercantile associations, the resolutions of the railway commissioners of 19 States, the insistent and repeated views of the Interstate Commerce Commission, the lesson taught by every other railway country of the earth, the due protection of the large organizations to whom special fares are granted and

² See, for example, the testimony of Stuyvesant Fish, President of the Illinois Central, before the United States Industrial Commission, calling attention to the fact that while railway officials could be prohibited by law from selling tickets below published rates, individuals could not be so prohibited, and that some railways sold their tickets to competitive points to brokers, paying them a commission for making the sale, out of which the brokers scalped the rate. (Industrial Commission, 1900, iv, p. 334.)

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of the railways granting them, the due observance of law, and the best moral sense of all the commercial world, were all arrayed on the honest side of every phase of this question. Ticket brokerage was defended by not over 3 railroads and 560 ticket brokers. The two organized bodies of scalpers, the American Ticket Brokers' Association and the Guarantee Ticket Brokers' Association, stood behind the scalping business.

George R. Blanchard, former commissioner of the Joint Traffic Association, says in his testimony before the United States Industrial Commission (IV, 623): "There are two organized bodies of scalpers: the American Ticket Brokers' Association and the Guarantee Ticket Brokers' Association. They have their directors, officers, and agents, rules and regulations, and they adopt resolutions and discuss and decide questions of cut fares."

One railroad president told me that most of the tickets the scalpers sold they got directly from the railroads. Another railroad president has given similar testimony before the Industrial Commission, and also stated that he did not believe the railroads could stop the scalping trade in unused tickets.³

This method of discrimination has, however, received a serious setback so far as railway collusion is concerned. The presidents of the leading railroads have agreed with each other to support the law, and scalping is a more limited profession than it formerly was. In fact, a much larger claim than this is made by some. In going over this year the materials I have collected on the subject, I came upon the statement that "scalping has been practically abolished." I put up my pen and went down town to see. I found on Washington Street (Boston), in the ticket-office district, a man with "Cut Rates" printed in large letters on his back. The same sign was above a door near by, and on the stairway. I went up.

³ Industrial Commission, iv, pp. 457-458.

"What will it cost me to go to Chicago?" I asked.

"I can give you a ticket for \$12 if you are going within a few days."

"Suppose I don't go for a month or two?"

"Well, I can give you a \$15 rate most any time."

"First class?"

"Yes."

"Over what route?"

"The Boston & Maine and Grand Trunk."

"What can you do over the Boston & Albany?"

"I'll give you transportation on that route for \$18."

"Will that be first class?"

"No."

"Tourist?"

"Yes."

"Do you have the \$12 tickets often?"

"Sometimes; but I can give you a \$15 rate any time."

I went to the railway ticket offices and learned that the fare from Boston to Chicago by the Boston & Maine and Grand Trunk was \$18 first class, and \$17 tourist; by the Boston & Albany \$22 first class, and \$19 tourist, and through New York \$25.

It is clear, therefore, that scalping is not a lost art. The regular one-price ticket agents say that the cut-rate business is still in flourishing condition. It may be that railway offices no longer act with scalpers to evade the law, but when a scalper says he will give you a first-class ticket (worth \$18 at the depot) for \$15 any time you want it, it looks as though he had some pretty certain source of supply. One scalper here, I am told, is the brother of the advertising manager of a monthly magazine. Railroads advertising in the magazines pay in tickets and the manager turns these tickets over to the scalper. The same thing is done in New York and Chicago, and probably in other places. Scalpers also get unused portions of excursion and other tickets. And perhaps some of the railways

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are still in direct collusion with scalpers. Every freight pool or agreement to prevent cutting freight rates that was ever made was broken by some railroad secretly cutting prices, and it may be that an agreement to maintain fares is not safe against secret cutting either.

One of the most peculiar things about scalping is that, unlike other forms of discrimination, its benefits go to the poor man instead of the rich man. It is the only kind of discrimination that gives the poor man any comfort or tends to diffuse wealth instead of concentrating it. In this one case the rich help to pay for the poor man's transportation; in all other cases the poor man and the man of moderate wealth help to pay for the service the rich man gets. Perhaps this partly explains why it is that many railroads have taken a more decided stand against this abuse than against any other in the long list of evils that afflict transportation in this country.

CHAPTER IV.

FREIGHT DISCRIMINATION.

WE come now to a kind of discrimination that enables a railway manager to determine which of the merchants, manufacturers, mine owners, etc., on his line shall prosper and which shall not; what cities and towns shall grow, what States shall thrive, what industries shall be developed.

The purpose of discrimination may be (1) to keep business from going to a competing line; (2) to increase revenue by creating new business for which, if necessary, rates may be dropped very low, as anything above the cost of handling on new business will add to income; (3) to simplify and solidify traffic; (4) to favor persons who, through political influence or other power may aid or injure the road, or who, through friendship, marriage, business or civic relation, or otherwise, have a "pull" with the management; (5) to advance the interests or enhance the value of a business, or property, or place, in which the railway or its officers or their friends are interested; or (6) to kill or injure a place or person or business that has incurred the enmity of the railways or their allies.

As a result of the play of these motives our railroad history is full of unfair discriminations between persons, places, and industries in the United States, and between domestic and foreign trade. The methods and forms are many and have grown more numerous with each succeeding epoch, but the predominant forms vary in the different strata. We still have plenty of living specimens of the

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species that prevailed in earlier periods, but the leading forms now are comparatively recent evolutions.

The history of discriminations would fill many volumes. The Hepburn Committee (1879) appointed by the New York Legislature collected about 5000 cases of discrimination. It was shown to be a common thing for railroads to give favored shippers discounts of 50, 60, 70, and even 80 percent from the regular rates. The special contracts involving favors in force for one year on a single railroad, the New York Central, were estimated at 6000. The United States Senate Committee of 1885, the Congressional Committee of 1888, the Interstate Commerce Commission, 1887-1905, the United States Industrial Commission, 1900-1902, the Wisconsin investigation in the fall of 1903, the United States Senate Committee of 1905, the State railroad commissions, the courts, and other investigating bodies have brought to light additional thousands of discriminations. We shall select some examples illustrating various methods of discrimination.

CHAPTER V.

THE EARLY YEARS, HEPBURN REPORT, ETC.

ONE of the discriminations most complained of in early years was the charging of lower rates for a long haul than for a short haul on the same line — less for the whole than for a part.

For example, the rate from New York to Ogden was \$4.65 per hundred, while \$2.25 per hundred carried the same freight all the way from New York to San Francisco. The railroads charged more if the car stopped part way than if it went on to the Pacific, — more than twice as much, in fact, for the part haul as for the full distance, so that the extra charge for not hauling the car on from Ogden to Frisco was greater than for hauling it the entire distance from ocean to ocean. They seemed to be willing to take off half for the privilege of hauling the car another 1000 miles. These methods are still in practice.

The C. B. & Q. hauled stock from points beyond the Missouri River to Chicago for \$30 a car, while charging \$70 a car on much shorter hauls to points in Iowa. The Northern Pacific charged twice as much from New York to points a hundred miles or more east of Portland, as from New York clear through to Portland. Freight was shipped from New York State to Council Bluffs and then back to Atlantic, Iowa, 60 miles west of Council Bluffs on the Rock Island, for less than the charge direct to Atlantic. From Chicago to Kankakee, 56 miles, the Illinois Central charged 16 cents per cwt. for fourth-class goods, while it carried

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the same goods to Mattoon, 116 miles farther on, for 10 cents per cwt. The grain rate on the Pennsylvania Railroad from Chicago to Pittsburg was 25 cents in 1878, while the same road would carry the grain clear through from Chicago to New York for 15 cents. Glassware paid 28 cents a hundred from Pittsburg to Chicago, and only 14 cents from Philadelphia to Chicago, half the rate for nearly double the distance. A tub of butter from Elgin, Ill., to New York, 1000 miles, paid 30 cents, while the freight on the same tub from points 165 miles out of New York City was 75 cents. The railways put the farmers of Western New York further from market than their competitors in the West. By such arrangements as this it was claimed the railroads had caused a depreciation of \$400,000,000 in the value of improved lands in New York, Pennsylvania, New Jersey, Maryland, and Delaware, while the area of improved lands in those States had increased 4,500,000 acres.¹

The evils of unjust rates and railway favoritism for persons and places were earnestly discussed in the press, and in State legislatures, and in Congress. One of the examples of discrimination that caused much discussion in Congress was the Winona case. Cotton paid \$1 a bale from Memphis to New Orleans, 450 miles; from Winona to New Orleans, 275 miles, travelling possibly in the same train with the Memphis bales, the rate was \$3.25 per bale. Another example adduced in Congress was the 75 cent rate from New York to New Orleans, while points half way paid \$1.00 for the same service.

The Granger Laws.

In the early seventies (1872 and following years), Iowa, Nebraska, Minnesota, Kansas, and other States of the Middle West passed what are known as the "Granger laws,"

¹ Hudson, "The Railways and the Republic," p. 42.

fixing maximum rates and forbidding discriminations. Railroad commissions were also established in these States to control the roads, and it was hoped that these commissions, which grew out of the Granger agitation and were to represent the public interest and the people's sovereignty in their relations with the railways, would be able to diminish greatly and perhaps abolish unjust discriminations. In this hope, however, the people were disappointed.

Speaking of this experience Governor Larrabee of Iowa said in 1893: "Every year seemed to add to the grievances of the public. Success greatly emboldened the railway companies. Discriminations seemed to increase in number and gravity. At many points in the western part of the State freight rates to Chicago were from 50 to 75 percent higher than from points in Kansas and Nebraska. A car of wheat hauled only across the State paid twice as much freight as another hauled twice the distance from its point of origin to Chicago. Minnesota flour was hauled a distance of 300 miles for a less rate than Iowa flour was carried 100 miles. Certain merchants received from the railroad companies a discount of 50 percent on all their freights, and thus were enabled to undersell all their competitors. The rate on coal in carload lots from Cleveland, Lucas County, to Glenwood was \$1.80 per ton, and from the same point to Council Bluffs only \$1.25, although the latter was about thirty miles longer haul. Innumerable cases of this kind could be cited. There was not a town or interest in the State that did not feel the influence of these unjust practices."

The Hepburn Investigation.

This most famous and enlightening investigation of the early period was that of the Hepburn Committee of New York in 1879. The committee found that many shippers were paying two or three times, and in some cases five times, the rates paid by their rivals.

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William H. Vanderbilt told the committee that, as a rule, all large shippers who asked for special rates got them. Among the men his road had helped to build up by special rates was A. T. Stewart, the great dry-goods merchant of New York. He had a rate of 13 cents from his factories over the New York Central to New York, while small concerns paid 20 to 40 cents for this same service. A big dealer in cotton cloth had a 20 cent rate, while others paid the regular 35 and 40 cent rate. Five grocery firms in Syracuse had a flat 9 cent rate instead of the published tariff of 37, 29, 25, and 18 cents, according to the class of goods. Four Rochester firms had a special rate of 13 cents against the regular tariff of 40, 30, 25, and 20 cents. Five firms at Binghamton and five at Elmira had rates from $\frac{5}{8}$ to $\frac{1}{3}$ of the tariff. Three Utica dry-goods merchants had a rate of 9 cents and another had a rate of 10 cents, while the regular rates which the outside public paid were 33, 26, and 22 cents, according to class. Soap shipped by B. of New York to C. of Syracuse cost 12 cents freight per box if the freight was paid by the shipper in New York, but only 8 cents a box if the freight was paid by the consignee in Syracuse.

A report of the Erie Railroad showed 34 cases of special cut rates, and a New York Central report showed 33 examples. The books of the Central showed 6000 special rates granted during the first 6 months of 1880. About 90 percent of the Syracuse business and 50 percent of the entire business of the road was done on special rates.² It had given special rates to individuals and firms at 22 points on its line between Albany and Buffalo. The specials generally went down to about $\frac{1}{3}$ of the scheduled rates to the same place, but in Syracuse a special agreement was unearthed in which the rate was so emaciated as to be only $\frac{1}{4}$ of the size of the regular rate on first-class goods to which it applied.

² Hepburn Report, N. Y. Legislature Investigation, 1879, p. 120.

The committee also found the long-haul discrimination in full bloom. Flour went from Milwaukee to New York for 20 cents, while the charge from Rochester to New York was 30 cents. On some goods the rate from New York to Syracuse, 291 miles, was 10 cents; New York to Little Falls, 217 miles, 20 cents; New York to Black Rock, 445 miles, 20 cents also. Syracuse must have had a strange fascination for the railroad men, to keep them from making a lower rate from the point 400 miles away than from the point 200 miles away, for they love long hauls. Goods were shipped from Rochester to New York and then from New York back over the same road through Rochester to Cincinnati more cheaply than they could be sent direct from Rochester to Cincinnati. W. W. Mack, a Rochester manufacturer, testified that he saved 14 cents a hundred in this way, and that he saved 18 cents a hundred in his St. Louis business in the same way. In both these cases the railroad company carried the goods 700 miles farther than the direct course for a charge considerably less than for the direct haul.

Butter was carried from St. Lawrence Co., N. Y., to Boston for 60 cents a hundred, while the rate from nearer stations was 70 cents, 80 cents, and even 90 cents at St. Albans, Vt., increasing as the distance decreased. The railroads appear to recognize the fact that happiness consists in the exercise of the faculties, and they wish to exercise their faculties to the utmost by securing long hauls even though the long rate may not leave nearly so much profit as the rate for the short haul.

Some of the worst discriminations of the early years were those connected with the oil business.³ In 1872 the Oil Combine (then called the South Improvement Co.)

³ The facts appear at full length in the reports of the Hepburn Committee, the Select Committee of the United States on Interstate Commerce, 49th Congress, 1st Session, Lloyd's "Wealth against Commonwealth," and Miss Tarbell's "History of the Standard Oil Company."

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secured a secret agreement from all the railroads running into the oil regions, first, to double freight rates on oil; second, not to charge the S. I. C. the increase; third, to pay the S. I. C. the increase collected from all other shippers. The rate to Cleveland was to be raised to 80 cents, except for the S. I. C., which continued to pay 40, and would receive 40 of the 80 paid by any one else. The rate to Boston was raised to \$3, and the S. I. C. would receive \$1.32 of it. The Combine was to have 40 cents to \$1.32 a barrel rebate not only on their own oil which constituted only one-tenth of the business, but on all the oil their competitors shipped, so they would get \$9 in rebates for every dollar they paid in freight. The S. I. C. were to receive an average of \$1 a barrel on the 18,000 barrels produced daily in the oil regions. The rates were raised as agreed, but the excitement in the oil regions was so intense that mobs would have torn up the tracks of the railways if Scott and Vanderbilt and the rest had not telegraphed that the contracts were cancelled, and put the rates back. But some of the contracts afterwards came into court, and had not been cancelled at all. In 1874 the roads began gradually to carry out the plan that had been stopped by popular excitement in 1872.

In 1874 the Oil Combine had on some lines 10 different transportation advantages over its competitors, *i. e.*, 49 cents direct rebate per barrel of refined oil, 22 cents rebate on crude-oil pipeage, $8\frac{1}{2}$ percent of refined oil carried free (due to the method of calculating crude and refined equivalents), 13 cents a barrel advantage through possession of the railroad oil terminal facilities, 15 percent of by-products carried free, a rate to New York 10 cents a barrel less than the published rate on refined oil, and 15 cents on crude oil, exclusive use of tank cars, underbilling of carload weights, twenty thousand lbs. often for cars containing forty thousand or even sixty thousand lbs. of oil, or a lump sum per car regardless of excess weight, and a mile-

age payment from the railroads on the tank cars amounting in itself to a large rebate.

Nearly all the refineries of the oil region and of Pittsburg passed by sale or lease into the hands of the Combine in 1874-5.

W. H. Vanderbilt, and other prominent railroad men were stockholders in the Standard.

Frank Rockefeller, brother of John D., testified before a congressional committee July 7, 1876, that he believed Tom Scott, W. H. Vanderbilt, and other big railroad men shared in the oil rebates.

The New York Central and the Erie sold their terminal facilities for handling oil to the Standard Oil Co., thereby making it practically impossible for the roads to transport oil for the competitors of the Trust. The Pennsylvania Railroad also, under compulsion of a rate war, made a deal with the Standard by which the latter acquired the oil cars, pipe lines, and refineries of the Empire Company, a creature of the Pennsylvania Railroad.⁴

Vanderbilt told the Hepburn Committee, August 27, 1879, that "if the thing kept on the oil people would own the roads."

After the Pennsylvania fought the Standard in 1877 and lost, the Combine paid 11 cents net freight (after deducting rebate) on each barrel of oil to New York, while its competitors paid \$1.90 per barrel,⁵—a discrimination of 1600 percent by means of exclusive tank cars and rate arrangements. The trunk lines would not furnish competitors of the Standard with tank cars nor give them rates and conditions that would allow them to use their own tank cars.

⁴ Tarbell's "History of the Standard Oil Co.," pp. 185-190; Lloyd's "Wealth against the Commonwealth," pp. 87-88.

⁵ The Standard paid nominally 60 cents a barrel, but got a rebate of 49 cents, so that their net rate was 11 cents per barrel against \$1.90 for the independents. See report of the Hepburn Committee (N. Y.), 1879, and George Rice's pamphlet on "The Standard Oil Trust."

The independents had to sell their tank cars or side-track them, because the Oil Combine prevented the railroads from giving them practical terms. At times when oil could have been shipped by the independents they could not get cars, though hundreds were standing idle on the switches.

So the independents had to ship their oil in barrels, paying a higher rate than on tank oil, and paying not only on the oil, but on eighty lbs. of wood in the barrel, making four hundred lbs. per barrel instead of three hundred twenty lbs. per barrel by tank.

Josiah Lombard of New York, the largest independent refiner of oil at the seaboard, testified as follows before the Hepburn Committee June 23, 1879:

"Tom Scott, President of the Pennsylvania Railroad Co., was questioned whether we could have, if there was any means by which we could have, the same rate of freight as other shippers got, and he said flatly, 'No.'

"And we asked him then, if we shipped the same amount of oil as the Standard, and he said, 'No.'

"We said that 'if they had not sufficient cars to do the business with we would put on the cars.'

"Mr. Scott said that they would not allow that, and said that 'the Standard Oil Co. were the only parties that could keep peace among the roads.'"

Cassatt, Vice-President, confirms the above and adds:

"The discrimination would be larger on a high rate of freight than a low rate of freight;" also admits that the "Standard Oil Co. had some 500 cars full here and at Philadelphia and Baltimore; that he had not discovered it until recently."

Mr. Lombard further testified:

"Refineries were thus shut down for want of cars.

"Cassatt threatened, if the independents built the Equitable Pipe Line or any other lines of pipe [as follows]:

"'Well, you may lay all the pipe lines you like, and we will buy them up for old iron.'

“R. C. Vilas, General Freight Agent of the Erie (and brother of Geo. H. Vilas, Auditor of the Standard Oil Co.), absolutely refused us cars, saying the Standard Oil Co. had engaged them all.

“J. H. Rutter, General Freight Agent, New York Central, would not furnish any cars, and also said, ‘We have no terminal facilities now.’”

A. J. Cassatt testified before the New York Committee that in 18 months the Standard Oil had received rebates amounting to \$10,000,000.

In addition to many other advantages enjoyed by the Standard people the Pennsylvania Railroad in 1878 gave the Combine, through the “American Transfer Co.,” a “commission” of 20 cents a barrel on all shipments of petroleum, — not only on their own shipments, but on shipments made by the independents also. At the same time the New York Central and the Erie were paying the Standard “commissions” of 20 to 35 cents a barrel on all the oil shipped over those roads.

At one time the transcontinental lines charged \$105 to return an empty “cylinder” tank car from the Pacific Coast to the Missouri River, while making no charge to the Standard for returning their “box” tank cars, each of which contained a cylinder, which, however, was set upright instead of being placed longitudinally; a distinction without a difference, but it served to make a discrimination of over \$100 a car in favor of the Trust.

The railroads allowed the Oil Trust to stop its cars and divide up a tank load at two or more stations, but denied this privilege to the competitors of the Trust.

The Hepburn Committee reported (1879) that “the Standard Oil Co. receives rebates from the trunk lines, ranging from 40 cents to \$3.07 a barrel on all oil shipments: That the trunk lines sell their oil-tank car equipments to the Standard and agree to build no more: That the Standard controls the terminal facilities for handling oil

of the four trunk lines by purchase or lease from the railroads: That it has frozen out and gathered in refineries of oil all over the country: That it dictates terms and rates to the railroads: That the trunk lines have hauled its oil 300 miles for nothing to enable it to undersell seaboard refineries not then under its control: That it has succeeded in practically monopolizing the oil business: That the transactions of the Standard are of such character that its officers have been indicted, and that its members decline under oath to give details lest their testimony should be used to convict them of crime.”⁶

The oily people were able in one way or another to gain ascendancy over all the railroads. “We made our first contract with the Standard Oil Company,” said Mr. Cassatt, “for the reason that we found that they were getting very strong, and they had the backing of the other roads, and, if we wanted to retain our full share of the business and get fair rates on it, it would be necessary to make arrangements to protect ourselves.”

The Combine used the railroads to ruin its rivals, and did it with a definiteness and vigor of attack never before attempted, and with a success that would have been impossible without the use of the railroad power. An example or two will make the matter clear.

Mr. Corrigan, an oil refiner of Cleveland, became so prosperous in the seventies that he attracted the attention of the Standard Oil, and in 1877 he began to have trouble. He could not get the crude oil he bought shipped to Cleveland, nor his product shipped away, with reasonable promptness. The railroads refused him cars, and delayed his shipments after they were loaded. And he was driven to lease and finally sell his works to the Standard, which had no difficulty in getting cars and securing prompt service.

George Rice became a producer of oil in 1865. A little later he established a refinery at Marietta, Ohio. In Janu-

⁶ Quoted from a synopsis of the Report.

ary, 1879, the freight rates on oil were raised by the railroads leading out of Marietta, and by their connections. In some cases the rates were doubled, while the rates from Cleveland, Pittsburg, Wheeling, and other points where the Combine had refineries, were lowered. The Baltimore & Ohio, the Pennsylvania, the Lake Shore, and all the other railroads involved, made the deal in unison, and after a secret conference of railway officials with the Standard Oil people. The change hurt the railroads, cut off their business in oil from Marietta entirely, but they obeyed the orders of the Standard nevertheless.

"What would be the inducement?" the freight agent of the B. & O. connection was asked.

"That is a matter I am not competent to answer," he replied.⁷

Rice, finding himself shut off from the West, North, and East, developed new business in the South, but everywhere he went he was met with new discriminations, and even refusals in some cases to give him any rates at all. He could not ship to certain points at any price. In other cases the oil rates were jumped up for his benefit, and his cars were delayed or sidetracked by the railroads. Not satisfied with obstructing and in large part blocking the shipment of refined oil out of Marietta, the Combine did all it could to cut off Rice's supply of crude oil from the wells. It bought up and destroyed the little pipe line through which he was getting most of his oil. Rice then turned to the Ohio fields and brought his oil in by rail over the Cleveland and Marietta Railroad. Under threat of withdrawing its patronage the Combine then compelled the road to double the rates to Rice and pay over to the Combine five-sevenths of all the freight the road collected on oil. Rice had been paying 17 cents a barrel from the oil fields to his refinery. His rate went up to 35 cents while the Combine paid only

⁷ Railroad Freights, Ohio House of Representatives, 1879, pp. 159-163.

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10 and got 25 cents of each 35 paid by Rice.⁸ "Illegal and inexcusable abuse," said Judge Baxter when Rice took the case into court; and the Senate Committee was also emphatic in its condemnation. The case is in line with the whole history of the railroads in their relations with the Oil Combine, the remarkable fact in this instance being that the victim had nerve enough to fight the Combine. He took the facts to the Ohio Legislature, to the courts, to investigating committees of New York, and Congress, and rendered a great public service by bringing the ways of the railroads and the trust to the light of publicity. If all the victims of the Oil Combine had manifested equal pluck and public spirit, the evil we are discussing would long since have ceased to exist.⁹

⁸ *Hardy v. Cleveland & Marietta R. R.*, Circuit Court, Ohio, E. D., 1887, 31 Fed. Rep. 689; Senate Select Committee on Interstate Commerce, 49th Congress, 1st Session, p. 199.

⁹ Besides the references already given on the Rice affair, see the Trust Investigation of Congress, 1888; the testimony in the Rice case before the Interstate Commerce Commission, Nos. 51-60, 1887; Decisions of the I. C. C., vol. 1, pp. 503, 722; vol. 2, p. 389; vol. 3, p. 186; vol. 4, p. 228; vol. 5, pp. 193, 660; *State of Ohio v. Standard Oil Co.*, 49 Ohio St. Rep. 317; Lloyd, chapters xv, xvi, xvii; and Tarbell's History.

CHAPTER VI.

THE SENATE INVESTIGATION OF 1885 AND THE INTER-STATE COMMERCE ACT.

IN 1885 the United States Senate appointed a committee to investigate railway discriminations, etc., and this committee made one of the ablest reports that has ever been issued in relation to railway abuses. It threw a flood of light upon the nature and prevalence of discrimination, and the reasons for it. On page 7 of this report the committee says that our efficient service and low rates (low average rates) "have been attained at the cost of the most unwarranted discriminations, and its effect has been to build up the strong at the expense of the weak, to give the large dealer an advantage over the small trader, to make capital count for more than individual credit and enterprise, to concentrate business at great commercial centres, to necessitate combinations and aggregations of capital, to foster monopoly, to encourage the growth and extend the influence of corporate power, and to throw the control of the commerce of the country more and more into the hands of the few."

On page 40 the committee says: "Railroad companies are not disposed to regard themselves 'as holding a public office and bound to the public,' as expressed in the ancient law. They do not deal with all citizens alike. They discriminate between persons and between places, and the States and Congress are consequently called on to in some way enforce the plain principles of the common law for the protection of the people against the unlawful conduct

of common carriers in carrying on the commerce of the country."

On page 188 the following example is given: "One reference to the testimony must suffice to illustrate the universality of individual favoritism, the reasons which influence the railroads in favoring one shipper to the ruin of another, and the injustice of the system. Mr. C. M. Wicker of Chicago, a former railroad official of many years' experience, was asked if he knew anything of discrimination upon the part of the transportation companies as between individuals or localities, and testified as follows:

"MR. WICKER. Yes; I do. And this discrimination, by reason of rebates, is a part of the present railroad system. I do not believe the present railroad system could be conducted without it. Roads coming into this field to-day and undertaking to do business on a legitimate basis of billing the property at the agreed rates would simply result in getting no business in a short time.

"SENATOR HARRIS. Then, regardless of the popularly understood schedule rates, practically it is a matter of underbidding for business by way of rebates?

"MR. WICKER. Yes, sir; worse than that. It is individual favoritism, the building up of one party to the detriment of the other. I will illustrate. I have been doing it myself for years and had to do it.

"SENATOR HARRIS. Doing it for yourself in your position?

"MR. WICKER. I am speaking now of when I was a railroad man. Here is quite a grain point in Iowa, where there are 5 or 6 elevators. As a railroad man I would try and hold all these dealers on a "level keel" and give them all the same tariff rate. But suppose there was a road of 5 or 6 or 8 miles across the country, and these dealers should begin to drop in on me every day or two and tell me that the road across the country was reaching within a mile or two of our station and drawing to itself all the grain.

You might say that it would be the just and right thing to do to give all the 5 or 6 dealers at this station a special rate to meet that competition through the country. But as a railroad man I can accomplish the purpose better by picking out one good, smart, live man, and giving him a concession of 3 or 4 cents a hundred, let him go there and scoop the business. I would get the tonnage, and that is what I want. But if I give it to the five, it is known in a very short time. . . . When you take in these people at the station on a private rebate you might as well make it public and lose what you intend to accomplish. You can take hold of one man and build him up at the expense of the others, and the railroad will get the tonnage.

“SENATOR HARRIS. The effect is to build the one man up and destroy the others ?

“MR. WICKER. Yes, sir ; but it accomplishes the purposes of the road better than to build up the 6.

“SENATOR HARRIS. And the road, in seeking its own preservation, has resorted to that method of concentrating the business into the hands of one or a few, to the destruction of the many ?

“MR. WICKER. Yes, sir ; and that is a part and parcel of the system.”

On page 189 the committee says :

“The practice prevails so generally that it has come to be understood among business men that the published tariffs are made for the smaller shippers, and those unsophisticated enough to pay the established rates ; that those who can control the largest amounts of business will be allowed the lowest rates ; that those who, even without this advantage, can get on ‘the inside,’ through the friendship of the officials or by any other means, can at least secure valuable concessions ; and that the most advantageous rates are to be obtained only through personal influence or favoritism, or by persistent ‘bulldozing.’

“It is in evidence that this state of affairs is far from

satisfactory, even to those specially favored, who can never be certain that their competitors do not, or at any time may not, receive even better terms than themselves. Not a few large shippers who admitted that they were receiving favorable concessions testified that they would gladly surrender the special advantages they enjoyed if only the rates could be made public and alike to all."

Again, on page 191 :

"Universal complaint has been made to the committee as to the discriminations commonly practised against places, and as to the conspicuous discrepancies between what are usually termed 'local' rates and what are known as 'through' rates."

In summing up the testimony on pages 180-182 of their report, the committee presents this tremendous indictment :

"The complaints against the railroad systems of the United States expressed to the committee are based upon the following charges :

"1. That local rates are unreasonably high, compared with through rates.

"2. That both local and through rates are unreasonably high at non-competing points, either from absence of competition or in consequence of pooling agreements that restrict its operation.

"3. That rates are established without apparent regard to the actual cost of the service performed, and are based largely on what the traffic will bear.

"4. That unjustifiable discriminations are constantly made between individuals, in the rates charged for like service under similar circumstances.

"5. That improper discriminations are made between articles of freight and branches of business of a like character, and between different quantities of the same class of freight.

"6. That unreasonable discriminations are made between localities similarly situated.

"7. That the effect of the prevailing policy of railroad management is, by an elaborate system of special secret rates, rebates, drawbacks, and concessions, to foster monopoly, to enrich favored shippers, and to prevent free competition in many lines of trade in which the item of transportation is an important factor.

"8. That such favoritism and secrecy introduce an element of uncertainty into legitimate business that greatly retards the development of our industries and commerce.

"9. That the secret cutting of rates and the sudden fluctuations that constantly take place are demoralizing to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses.

"14. That the differences in the classifications in use in various parts of the country, and sometimes for shipments over the same roads in different directions are a fruitful source of misunderstandings, and are often made a means of extortion.

"15. That a privileged class is created by the granting of passes, and that the cost of the passenger service is largely increased by the extent of this abuse.

"16. That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock, and interest on bonds improperly issued.

"18. That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and travelling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in the reckless strife for competitive business."

The result of this investigation and report was the passage of the Interstate Commerce Act, in 1887, affirming the

common law rule that carriers' charges must be reasonable and impartial. Common carriers are forbidden to give "any undue or unreasonable preference or advantage to any person, locality, or description of traffic in any respect whatever, or subject any person, locality or description of traffic to any undue or unreasonable disadvantage in any respect whatsoever." "No common carrier" says Section 2, "shall directly or indirectly, by special rate, rebate, drawback, or other device, charge or receive from any person greater or less compensation for any service in the transportation of passengers or property than it charges or receives from others for a like and contemporaneous service under substantially similar circumstances and conditions." Section 4 makes it "unlawful to receive more for a shorter than for a longer distance, including the shorter on the same line, in the same direction, under substantially similar circumstances and conditions," except where the Commission created by the Act shall authorize the carrier to charge less for the longer than for the shorter distance. Rates must be published and filed with the Commission, and 10 days' notice must be given of advances. Any deviation from the published tariff is unlawful. The Act excepted traffic "wholly within one State," and provided that property might be handled free or at reduced rates for the United States, State, or municipal governments, or for charitable or exhibition purposes; that preachers might have reduced rates, and that passes might be given to employees of the road or by exchange to employees of other roads. The penalty for breach of the law was made a fine not exceeding \$5000 for each offence, and victims of discrimination, etc., could collect damages.

CHAPTER VII.

THE INTERSTATE COMMISSION.

A **STRONG** Commission was appointed, the Chairman being Thomas M. Cooley, one of the ablest jurists in the country, Chief Justice of the Michigan Supreme Court, author of "Constitutional Limitations" and other works of the highest authority. The Commission started with a review of the evils the Interstate Act was intended to abolish, and entered earnestly upon the great work of enforcing the law.

The Commission's statement of the arrangements used by the railways for discrimination is so admirably clear that a part of it cannot fail to be useful here.

"These arrangements," says the Commission, "took the form of special rates, rebates and drawbacks, underbilling, reduced classification, or whatever might be best adapted to keep the transaction from the public; but the public very well understood that private arrangements were to be had if the proper motives were presented. The memorandum book carried in the pocket of the general freight agent often contained the only record of the rates made to the different patrons of the road, and it was in his power to place a man or a community under an immense obligation by conceding a special rate on one day, and to nullify the effect of it on the next by doing even better by a competitor.

"Special favors or rebates to large dealers were not always given because of any profit which was anticipated from the business obtained by allowing them; there were

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other reasons to influence their allowance. It was early perceived that shares in railroad corporations were an enticing subject for speculation, and that the ease with which the hopes and expectations of buyers and holders could be operated upon pointed out a possible road to speedy wealth for those who should have the management of the roads. For speculative purposes an increase in the volume of business might be as useful as an increase in net returns; for it might easily be made to look to those who knew nothing of its cause like the beginning of great and increasing prosperity to the road. But a temporary increase was sometimes worked up for still other reasons, such as to render plausible some demand for an extension of line or for some other great expenditure, or to assist in making terms in a consolidation, or to strengthen the demand for a larger share in a pool.

“Whatever was the motive, the allowance of the special rate or rebate was essentially unjust and corrupting; it wronged the smaller dealer oftentimes to an extent that was ruinous, and it was generally accompanied by an allowance of free personal transportation to the larger dealer, which had the effect to emphasize its evils. There was not the least doubt that had the case been properly brought to a judicial test these transactions would in many cases have been held to be illegal at the common law; but the proof was in general difficult, the remedy doubtful or obscure, and the very resort to a remedy against the party which fixed the rates of transportation at pleasure might prove more injurious than the rebate itself. Parties affected by it, therefore, instead of seeking redress in the courts, were more likely to direct their efforts to the securing of similar favors on their own behalf. They acquiesced in the supposition that there must or would be a privileged class in respect to rates, and they endeavored to secure for themselves a place in it.

“Local discriminations, though not at first so unjust and offensive, have nevertheless been exceedingly mischievous, and if some towns have grown, others have withered away under their influence. In some sections of the country if rates were maintained as they were at the time the interstate commerce law took effect, it was practically impossible for a new town, however great its natural advantages, to acquire the prosperity and the strength which would make it a rival of the towns which were specially favored in rates; for the rates themselves would establish for it indefinitely a condition of subordination and dependence to ‘trade centres.’ The tendency of railroad competition has been to press the rates down and still further down at these trade centres, while the depression at intermediate points has been rather upon business than upon rates.

“The inevitable result was that this management of the business had a direct and very decided tendency to strengthen unjustly the strong among the customers and to depress the weak. These were very great evils and the indirect consequences were even greater and more pernicious than the direct, for they tended to fix in the public mind a belief that injustice and inequality in the employment of public agencies were not condemned by the law, and that success in business was to be sought for in favoritism rather than in legitimate competition and enterprise.

“The evils of free transportation of persons were not less conspicuous than those which have been mentioned. This, where it extended beyond persons engaged in railroad service, was actual favoritism in a most unjust and offensive form. Free transportation was given not only to secure business, but to gain the favor of localities and of public bodies; and while it was often demanded by persons who had, or claimed to have, influence which was capable of being made use of to the prejudice of the railroads, it was also accepted by public officers of all grades

and of all varieties of service. In this last case the pass system was particularly obnoxious and baneful. A ticket entitling one to free passage by rail was even more effective in enlisting the assistance and support of the holder than its value in money would have been, and in a great many cases it would be received and availed of when the offer of money made to accomplish the same end would have been spurned as a bribe. Much suspicion of public men resulted, and some deterioration of the moral sense of the community traceable to this cause was unavoidable. The parties most frequently and most largely favored were those possessing large means and having large business interests.

"The general fact came to be that in proportion to the distance they were carried those able to pay the most paid the least. One without means had seldom any ground on which to demand free transportation, while one with wealth was likely to have many grounds on which he could make it for the interest of the railroad company to favor him; and he was oftentimes favored with free transportation not only for himself and family, but for his business agents also, and even sometimes for his customers. The demand for free transportation was often in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given."¹

The Commission had plenty to do. Complaints of unreasonable rates and unjust discriminations between shippers, commodities, and places poured in upon it, and vigorous decisions against favoritism and excessive rates poured out upon the railroads. During 1887 and 1888 the Commission dealt with cases of passes issued in contravention of law,² preferential fares for drum-

¹ I. C. C., First Report, 1887.

² Passes (annual in this case) to persons not in the regular service of the

mers,³ commissions on the sale of tickets,⁴ discounts on freight rates to large shippers,⁵ discrimination by combination rates,⁶ by preference of tank shipments of oil,⁷ by unfair distribution of cars,⁸ by underbilling,⁹ false classifications,¹⁰ commissions to soliciting agents,¹¹ etc. Underbilling, false classification, false weighing, and commissions to soliciting agents were investigated by the Commission in 1888 at New York, Buffalo, Detroit, Chicago, Omaha, Lincoln, and Washington.¹² All these methods of discrimination were found widely prevalent, and new legislation was asked for imposing a penalty on shippers who fraudulently obtained reduced rates.

When Congress met for the session of 1889 it was be-carrier held unlawful. *State v. Northern Pacific*, p. 359, vol. 2, Decisions, 1888.

³ Sale of 1000-mile tickets to commercial travellers at \$20 while charging others \$25 illegal. *Chicago & Grand Trunk*, p. 147, vol. 1, Decisions, 1887.

⁴ Paying commissions; selling tickets through brokers at reduced rates; rate wars, etc. *Pennsylvania, New York Central, Wabash, Chicago & Alton*, vol. 2, 1888, p. 513.

⁵ Discounts to shippers receiving more than 30,000 tons a year illegal. *Providence and Worcester*, vol. 1, 1887, p. 170.

⁶ In many cases the direct rate between two points, X and Y, was found to be greater than the combination of the rate from X past Y to a competitive point Z and the local rate back from Z to Y. For example, goods could be shipped from the Pacific coast to Kansas City and then back to points west of Kansas City more cheaply than they could be sent direct from the coast to these intermediate points. This enabled a shipper informed of the combination rates to get an advantage over one with less information who relied on the published tariffs stating the rates between his place of business and the points to or from which his shipments were to be sent. The Commission took up this matter in 1887 and the traffic managers of the roads agreed to revise their tariffs so that the direct local rate should in no case exceed the through rate plus the local rate back from the terminus or competitive point. This rule resulted in many material reductions of the rates to intermediate points; for example, the points between Denver and the Missouri River on the lines controlled by the Southern Pacific. See *Martin v. Southern Pacific R.R. I. C. C. Decisions*, vol. 2, 1888, pp. 1, 4.

⁷ A higher rate on oil in barrels than in tanks held unjust, vol. 2, p. 365. *Report*, 1888, p. 128.

⁸ *Report*, 1888, p. 112.

⁹ *Ibid.*, p. 114 *et seq.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

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lieved that the law had greatly reduced the number of passes issued, straightened out a part of the long-haul discriminations, and accomplished a good deal in the way of suppressing rebates, but it was clear that much remained to be done. In one way or another all over the country secret discriminations were still being made for the benefit of favored shippers. Congress therefore in March, 1889, amended the Interstate Commerce Act by adding to the fine a penalty of two years' imprisonment in the penitentiary in case of unlawful discrimination, and pronouncing the same penalties against shippers and their agents who secure advantage by false billing, false classification, etc., or by soliciting or otherwise inducing a railway to discriminate in their favor, or by aiding or abetting any such discriminations. It was also provided that 3 days' notice must be given in case of any reduction of rates, and that homeless and destitute persons, as well as preachers, might be favored with low fares.

The stringent provision for imprisonment did not prove any more effective than the milder law that preceded it, less so apparently, for the following years were flooded with unfair discriminations.¹³

¹³ The Commission's reports, 1889 to 1891, dealt with numerous discriminations between localities and persons through free transportation, commissions on the sale of tickets, combination rates, rebates, free cartage, payment of yardage charges, excessive car mileage on private cars, discounts for quantity, unfair classification, distribution of cars, special tariffs, advantage or disadvantage to particular commodities or methods of shipment, low rates on goods for export, etc., etc.

CHAPTER VIII.

EFFECTS OF THE INTERSTATE ACT.

AN investigation by the Commission in May, 1889, concerning passes, and covering 27 railroads, showed that passes were issued freely to expressmen, telegraph men, press men, managers of excursions, attorneys, persons contracting with the railroads in consideration of advertising, shippers, members of legislative bodies, United States, State, and municipal officers, officials of steamship and steamboat lines, etc. These passes were chiefly limited to a State, but to some extent were good for interstate journeys. Of State passes the larger numbers were issued to members of legislatures and drovers; "complimentaries" came next, with United States and municipal officers, newspapermen, and shippers, in the order named.

The Commission said: "The Interstate Commerce Act was intended to end all the abuses attending free transportation of persons, and to a considerable extent it has done so. But very largely the carriers, especially the strong systems, where the abuse has been greatest, have tried to avoid the law by falling back on State protection, and issuing passes within the limits of each State. Three of the large railroad systems, when called on by the Commission to make an exhibit of the passes issued by them, declined to do so on the ground that the passes were limited to the bounds of the State, and therefore not within the jurisdiction of the Commission. If the New York Central and Pennsylvania railroads can thus issue passes at discretion it is impracticable to enforce the laws against

their competitors.”¹ By issuing to a favored individual a pass good in Pennsylvania, another good in Ohio, another for Indiana, another for Illinois, etc., the Pennsylvania Railroad can give the beneficiary as full freedom of its lines as any interstate pass could give.

Pass making went merrily on all over the country, with a complaint now and then to let in the light, but no effective crusade against the disease. The Boston and Maine, for example, issued passes in Maine, New Hampshire, Vermont, and Massachusetts, to public officers of the States and the United States, members of legislatures, and railroad commissions, agents of ice companies, milk contractors, newspaper men, etc.² The Commission recorded its protest and declared that the “similar circumstances” of the Interstate Act do not relate to the social or official position of the passenger;³ but the pestilence is beyond the reach of the national board, and after eighteen years of Federal prohibition our railroad business is still honey-combed with political and commercial passes, as we have already seen in the second chapter of this book.

Ticket scalping, “an obvious evasion of the law,” and the payment of commissions on the sale of tickets in addition to salaries, so that the brokers were tempted to cut rates dividing their commissions with their customers, continued in full bloom in spite of the Federal law. The commissions were \$1 from New England points to Chicago; \$1 from Chicago to the Missouri River; and \$1 from the river to Denver. In addition to such definite amounts some roads paid 10 percent on their receipts for the passage, making a total commission of \$4 or \$5 or more in some cases for the sale of a single ticket.⁴ “In cases of

¹ Report, 1889, p. 10.

² 5 I. C. C. Decis. 69, 1891.

³ *Ibid.*; see also 5 I. C. C. Decis. 153, 1892. Case against the Louisville and Nashville for granting passes to members of the city council of New Orleans.

⁴ Investigation of the Commission, 1889.

commissions of only \$1 for short distances there may be little or no inducement for the agent to divide with the passenger, but in cases of cumulative commissions for long distances the temptation to divide is stronger, and the probability of abuse is so great that the impropriety of putting the opportunity before the agent is manifest. It is not unusual for a single company to pay a sum of \$100,000 or even more in a year, and the aggregate entailed reaches millions of dollars. This money is illegitimately spent; it is paid in excess of salaries to agents for the purpose of taking business from competitors, and when competitors all do it, it is difficult to see how any benefit can accrue from it to any company.”⁵

In 1890 the Commission reported that scalpers were supported by the railroads. They found 15 scalping offices in Chicago, 9 in Cincinnati, 13 in New York, 7 in Kansas City, etc. In 1895 they found that scalping “was steadily enlarging in scope and volume.”⁶ In 1897 the “vicious practice” was still in full swing, though New York, New Jersey, and eight other States had passed stringent laws against it.⁷ But it has now been largely reduced, though by no means abolished, and the diminution has come, not because the law acquired sufficient vigor to get itself enforced, but because the railroad presidents combined to stop the practice, which was recognized to be injurious to railroad interests.⁸

In respect to other forms of discrimination between passengers the Commission ordered that rates for groups or parties must not be lower than the regular fare for one passenger multiplied by the number of persons in the party,⁹ and that although separate cars might be provided

⁵ Report, Interstate Commerce Commission, 1889, p. 14.

⁶ Pages 103-107, I. C. C. Rep. 1895.

⁷ Report, 1897, p. 61.

⁸ See p. 20 above.

⁹ *Heard v. Georgia R. R.*, 1 I. C. C. Decis. 428, and 3 I. C. C. Decis. 111. But the United States Supreme Court decided against the Commission

for colored persons, they must have equal accommodations with white people who pay the same fare.¹⁰

Turning to freight discriminations, we find that a bewildering mass of questions and complaints has pressed upon the Commission. It has shown an earnest desire for justice, and for the most part good judgment, but it has accomplished comparatively little in the way of stopping unjust discriminations. Witnesses refused to testify, on the ground that testimony in respect to rebates and other forms of discrimination might be used to convict them of crime.

In the Counselman case (142 U. S. 547), Jan., 1892, the U. S. Supreme Court decided that a witness could not be compelled to testify in regard to discrimination in which he was involved, since the Federal law made it a criminal offence to make or benefit by discrimination. Unless the law exempts the witness from prosecution in consequence of his answers or in relation to the subject of them, he is not obliged to answer a question when the answer might tend to incriminate him.¹¹ Refusal to answer on such a plea is of course equivalent to confession of guilt. In this case Counselman, a large grain shipper, had been given rates on corn some 5 cents less per hundred than the rates paid by others from Kansas and Nebraska points to Chicago, over the Rock Island, Burlington, and other railroads. Five cents a hundred is an enormous profit on corn which the farmer had sold at 18 to 22 cents per hundred, and such a margin would enable the favored shipper to drive every one else out of the trade; and on many western roads it has been practically the case that only the railway officials and their

on this point May 1, 1892 (145 U. S. 263), and the B. & O. tickets for parties of 10 or more at $\frac{1}{2}$ less than the regular rates were sustained.

¹⁰ 2 I. C. C. Decis. 649, and 3 I. C. C. Decis. 465.

¹¹ This rule of exemption works great injustice under present conditions. It was built into the common law when people were struggling against oppressors in high places. But the conditions which made it useful have long since passed away, and it is now simply a millstone about the neck of justice.

secret partners can do business. Counselman refused to tell a United States grand jury whether or no he had had any rebates from the railroads in 1890. He said he had received none from Stickney's road, nor from the Santa Fe, had had no business with the latter, he thought, but as to the Rock Island, C. B. & Q., etc., he declined to answer on the plea that to do so might incriminate him.

Some railroad officials testified freely, but neglected to tell the truth.¹² Discriminations as a rule were secret. Even when it was clearly known that favoritism was being shown, shippers were generally afraid to complain, and in the small percent of cases where complaint and investigation took place it seemed impossible to get at the truth in any large way, because the railroad men for the most part would not "cough up" the facts. Still, something was done by the Interstate Commission, the courts, and the Industrial Commission. Some progress was made and some light secured. The jets of flame that here and there came up through the cracks from the under-world showed very clearly what was going on beneath the surface of railway affairs.

Direct Rebates.

Direct rebates on interstate traffic appear to have been checked for a few months after the passage of the Commerce Act, but the railroads admitted that they still gave rebates on traffic within a State¹³ just as they continued to

¹² Senate Committee, 1905, iv, pp. 2900-2901. Speaking of an investigation of rebates on flour from Minneapolis and Duluth, the Commission says (p. 8, Report for 1898): "All the railway witnesses denied knowledge of any violation of the statute, and most of the accounting officers testified to the effect that if rebates had been paid they would necessarily know about it and that their accounts did not show any such payments. It was nevertheless fully established by the investigation that secret rate concessions had been generally granted on this traffic and that the carrier had allowed larger rebates to some of the flour shippers than to others."

¹³ I. C. C. Rep. 1889, p. 75.

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give passes, making them good within one State, insisting in respect to both rebates and passes that they had a right to give them because the law did not reach State traffic. Nevertheless, as the Commission remarked, such rebates inevitably affect the rates upon interstate traffic, and a competing road whose traffic is taken a little further, crossing the state line, may be compelled to give rebates or surrender important business.

As a matter of fact, discriminating rates and rebates on interstate as well as State business were soon as much in fashion as ever.¹⁴

In one small town in the Middle West judgments for nearly \$40,000 were recovered against a railroad for illegal discriminations in that one town. In some cases the discriminations amount to \$40 a car. These cases were all subsequent to the Interstate Act.

Some years ago the Chief Justice of Kansas declared that the Santa Fe management preceding the present one was notorious for giving secret rebates. The president of the road was asked to resign because the railroad funds were some millions short, due, it is said, to the secret rebates the company had paid. An expert went over the books and discovered that some \$7,000,000 had been paid in rebates by the Santa Fe in a few years.

Shippers who would not or could not get rebates or concessions were in danger of serious loss and perhaps ruin. Mr. H. F. Douseman, for many years a grain shipper in Chicago, and chairman of the board of trade of that city, had to go out of business because he would not take the

¹⁴ See I. C. C. Rep. 1889, pp. 15, 16, 126, 130, 132, 237, 239, 240-242; Decisions, vol. 3, 1889, p. 89, 25% rebates on coal to certain points; p. 137, low rates on goods marked for export (10 cents on one hundred lbs. discount); p. 652, unlawful discount of 50% on emigrants' movables; Rep. 1890, pp. 111, 190, 192, coal rates; 183, discount for quantity; 189, export; 101, 192, hogs and hog rates; 184, stock yards; 99, 100, 185-187, oil; 112, 192, wheat and flour; 187, 190, private cars; 188, special tariffs; and other unjust discriminations relating to localities, privileges, etc., and not directly in point under the head we are dealing with.

rebates he might have had. Before 1887 he took rebates of 10 or 15 percent (2 or 3 cents on the cwt.), but after that he refused them. "Virtue is its own reward," and Mr. Douseman got his pay in that form. "I feel that I have been driven out of business because I would not accept a rebate," he told the Industrial Commission. "I have never taken a rebate since the Interstate Law went into effect. I did not propose to put myself in the shape of a criminal." ¹⁵

It may be a matter of surprise to many that even one man of this kind could be found in Chicago. If such virtue were prevalent the enforcement of law would be easy. Mr. Douseman says that for 6 months after the Interstate Law was passed no rebates were paid; everybody was on an equality. "After the first six months, rebates began to be given. At the end of the first year they were quite frequent, and they have continued ever since. Prior to 1887 the only time when rates were absolutely solid, when every one was on the same basis, was when the Vanderbilts were trying to bankrupt the West Shore road, and rates were down to 12 cents in New York. Everybody then, as I understand, had the same rates."

The condition of things in 1890 is shown by the reported statement of a Chicago railroad manager quoted by the Commission. "The situation in the West is so bad that it could hardly be worse. Rates are absolutely demoralized, and neither shippers, passengers, railways, nor the public in general make anything by this state of affairs. Take passenger rates for instance; they are very low; but who benefits by the reduction? No one but the scalpers. . . . In freight matters the case is just the same. Certain shippers are allowed heavy rebates, while others are made to pay full rates. . . . The management is dishonest on all sides, and there is not a road in the country that can be accused of living up to the Interstate Law. Of course when some poor devil comes along and wants a pass to

¹⁵ Testimony, U. S. Ind. Com. iv, p. 353.

save him from starvation, he has several clauses of the Interstate Act read to him; but when a rich shipper wants a pass, why, he gets it at once."¹⁶

Complaints and investigations from time to time in subsequent years showed the continuance of these conditions. For one concern a large number of cars of corn were carried from Kansas City to St. Louis at 6 cents per hundred lbs. while the tariff was 15 cents.¹⁷ In the traffic to Chicago one firm shipped all the grain over one road, and another firm "had the rate" on another line. It was clear that these shippers had advantages that enabled them to keep other shippers out of the field.¹⁸

A wholesale grocery house getting 25 percent rebate on its shipments established branches in various cities. Through a disagreement with one of the railroads that thought it was not getting its share of the business, the rebate enjoyed by one of the branches was withdrawn, and the branch in that city went out of business. A leading dry-goods firm declared that so long as it secured a rebate of 25 percent it had no objection to existing methods of rate-making.¹⁹

The International Coal Company declared, in a suit against the Pennsylvania Railroad for damages, that it was driven out of business by discrimination, its rival receiving rebates of 20 cents per ton in 1898-9 and 10 cents per ton in 1899-1900.

The railroads show a disposition to back each other in disregarding the law. Mr. McCabe, traffic manager for the Pennsylvania lines west of Pittsburg, said the Pennsylvania system would stand by any rate made by its connecting lines.²⁰

¹⁶ I. C. C. Rep. 1890, p. 25.

¹⁷ I. C. C. Rep. 1896, p. 78.

¹⁸ *Ibid.*, p. 82.

¹⁹ Industrial Commission, 1900, iv, p. 442.

²⁰ I. C. C. Dressed-meat Hearing, December, 1901, p. 94; Chicago and Alton manager to same effect for his road, p. 136.

CHAPTER IX.

SUBSTITUTES FOR REBATES.

NUMEROUS substitutes for the direct rebate were used. In some cases \$10 a car was paid on shipments of flour from the Northwest under pretence of paying for the cost of loading the car above the minimum weight.¹ Railroads paid 50 cents for the loading of each private stock car, and $\frac{3}{4}$ of a cent for every mile the car was hauled, loaded or empty. Yardage was also paid to the car-line for keeping the cattle in its charge in its own yards, at the rate of $3\frac{1}{2}$ cents per hundred lbs. for all cattle hauled to its yards. "The amount of these rebates," said the Commission, "more than pays the entire cost of the improved stock cars within 2 years, besides covering operating expenses."²

Twenty-six railroad companies operating in the territory extending in different directions from Chicago, and engaged in the business in which discriminations by allowances of car-mileage were supposed to exist, were summoned to make a showing of the allowances paid by each of them for car-mileage for the different classes of cars furnished by shippers, car companies, and individuals, or connecting lines. A single railroad company paid car-mileage to 65 different companies or firms owning cars, of which number 54 were

¹ I. C. C. Rep. 1898, p. 6.

² 4 I. C. C. Decis. 1891, p. 630. For example, on one line between Chicago and New York, "200 stock cars more than paid for themselves and all repairs, etc., in 2 years, and thereafter earned for the owners upwards of \$100,000 a year on no investment." See Report Iowa Railroad Commission, 1891, p. 30.

shippers and the rest fast freights. The Commission found that the mileage paid on private cars yielded a profit in many cases of 25 percent, 50 percent, and even more.

"The rates allowed for car-mileage were shown to be as follows: For ordinary freight cars, a uniform rate of $\frac{3}{4}$ of a cent a mile; for Pullman palace cars, 3 cents a mile; for Pullman tourist sleepers, 1 cent a mile; for ordinary passenger cars exchanged with other companies, 3 cents a mile; for baggage, mail, and express cars exchanged with other companies, $1\frac{1}{2}$ cents a mile by some roads, and 3 cents a mile by others; for refrigerator cars used for carrying dressed beef, 1 cent a mile in some cases, and in other cases $\frac{3}{4}$ of a cent a mile; for furniture cars, oil-tank cars, palace livestock cars, and other cars owned by private individuals and companies, $\frac{3}{4}$ of a cent a mile. Some companies pay mileage on tank cars both loaded and empty, and some only when loaded. For palace horse-cars no mileage is allowed on some roads, shippers in such cars paying for the car.

"The cost of the investment in cars, and the amount of mileage allowed for their use, show that the investment is very profitable. Refrigerator cars cost from \$900 to \$1000; private cattle-cars cost about \$650; oil-tank cars about \$610; cars used for the transportation of live hogs about \$500; ordinary freight cars from \$450 to \$500. Repairs on the cars are made by the railroad company in whose use they are when repairs are required. The life of a box car averages 15 years, and of a refrigerator car 8 years."³

"Private cars," owned by the railroads but chartered for private use, were the subject of discrimination of another kind. For example, a commercial salesman travelled with his assistant over the Northern Pacific in a private car stocked with samples. For the first trip he paid 15 round-trip fares between St. Paul and Portland, but for subsequent trips the road charged 15 local fares from point to point where stoppages were made. As theatrical and other

³ I. C. C. Rep. 1889, pp. 15-16.

parties in private cars were usually carried for 15 round trip fares it was alleged to be unfair to charge the drummer local rates.⁴

Terminal charges for delivery at certain places were made a means of discrimination.⁵ Free cartage for some shippers and not for others,⁶ or for one town and not for another, gave a decided advantage to the favored shippers.

To get the business of B., a Pittsburg dealer in beer, the B. & O., with the approval of Wight, one of its general officers, gave B. $3\frac{1}{2}$ cents per hundred for hauling his own beer from the station, while K., another beer dealer there, received no such concession, but paid the same freight rates and hauled his beer at his own expense. Wight was indicted and convicted before the district court for violation of Section 2 of the Interstate Act, and the United States Supreme Court sustained the decision in 167 U. S. 512, May, 1897, holding that the cartage allowance in one case and not in the other was a discrimination under the 2d section of the Commerce Act.

In Grand Rapids, Michigan, free cartage had been in vogue for 25 years, but in Ionia, near by, no free cartage was afforded by the railroads, although the station was nearer the centre or main delivery area of the city than in Grand Rapids. This had the effect of a discrimination against the merchants of Ionia amounting to about 2 cents per hundred lbs.⁷

⁴ 9 I. C. C. Decis. 1, 1901 Rep., p. 36. As the circumstances were substantially different in the two cases, the Commission said the local charge to the drummer was "not necessarily unjust."

⁵ An additional charge by the Santa Fe of \$2 a car on cattle consigned to the Union Stock Yards at Chicago, where the Santa Fe had for years delivered cattle, was held unlawful by the Commission, and its judgment was sustained by the United States Circuit Court, but overruled by the Court of Appeals. I. C. C. Rep. 1896, p. 45.

⁶ Free cartage for a distant shipper and not for a nearer one is equivalent to a rebate for the former. *Hegel Milling Company v. St. Louis, etc., Railroad*, 5 I. C. C. Decis. 1891, p. 57.

⁷ The railway charged the same rates from the East to Grand Rapids as to

In June, 1889, the Commission asked most of the leading roads, 585 in number, for information about free cartage delivery. From the answers it appears "that 65 railroads allowed free cartage delivery or equalizing cartage allowances, and 389 railroads do neither; 200 companies only switch cars over to mills and manufacturers. No company furnishes free cartage delivery at all stations, but as a rule, only at a few stations. The estimated cost of free cartage delivery will average about $2\frac{1}{2}$ cents per hundred pounds. Where an allowance is made for switching or for equalizing distances from shippers, the average cost is about \$2 per car or \$2.50."⁸

Denial of the stoppage-in-transit privilege at one locality while allowing it to others is unlawful.⁹ Differences in the time allowed for unloading may amount to a substantial preference. At Philadelphia 96 hours was allowed for unloading, against 72 hours at interior points, for coal, coke, or iron, and 48 hours for other goods. With demurrage charges of \$1 for each day's delay in unloading beyond the allotted time, the difference between 48 and 96 hours would mean \$2 a car.¹⁰

Free storage is another method of favoritism, sometimes Ionia, although the former was 33 miles a longer distance point on the same line of road, and in addition gave free cartage to Grand Rapids companies. Complaint was made in September, 1888; April 26, 1890, the Commission held the free cartage to be in effect a rebate, and ordered the railroad to desist from giving free cartage in Grand Rapids. (3 I. C. C. Decis. 60; I. C. C. Rep. 1896, pp. 37-39; 1897, pp. 94-95.) The Circuit Court upheld the order October, 1893 (57 Fed. Rep. 1002), but the Circuit Court of Appeals overruled the decision April, 1896 (74 Fed. Rep. 803), and the United States Supreme Court sustained the Court of Appeals. (167 U. S. 633, May, 1897.) The Commission made the mistake of resting the case on the 4th or long-haul section instead of the 2d or 3d sections relating to undue preference, and the railway should have been allowed the option of removing the discrimination by giving free cartage in Ionia or making a lower rate there. The order to discontinue free cartage in Grand Rapids was arbitrary and unnecessary.

⁸ I. C. C. Rep. 1889, pp. 18-19.

⁹ *Commercial Club v. Rock Island*, 6 I. C. C. Decis. 1896, p. 647.

¹⁰ *Pennsylvania Millers Association v. Reading R. R.*, 8 I. C. C. Decis. 1900, p. 531.

used systematically and extensively, as described by the Commission. "A shipper sends a carload of freight to a specific destination consigned to his order by arrangement with the carrier. The freight is kept in the car or freight house or some warehouse which the carrier controls, and on orders of the shipper or his agent issued from time to time the freight is delivered in small lots to designated persons. These persons are the actual consignees, and the shipper is enabled by this means to avoid paying the higher less-than-carload rate and to reap other advantages through this privilege of storage. Such special facilities as storage, handling, cartage, distribution, and reshipment of less quantities, either without charge or at extremely low compensation for the character of the service, amounted substantially to providing a shipper with branch business houses."¹¹

Overbilling and underbilling have been found to be very convenient substitutes for the rebate. A bill of lading may acknowledge the receipt of 70 barrels of flour; 65 only are shipped, and the railway pays damages for the loss of the 5 non-existent barrels. On the other hand railroads have been known to suggest to millers that they ship flour on the generous plan of shipping 200 barrels and billing 125.¹² Some shippers have been allowed to ship only 4 boxes of peaches to the hundred lbs., while others were permitted to ship 6 boxes to the hundred lbs. "That is the billing. Sometimes peaches are billed 4 boxes to the hundred lbs. to one point, and 6 boxes to the hundred lbs. to a point 350 miles farther on."¹³ At another time the cashier of an important firm is made a nominal agent for the railway company, and under the name of commission to him an enormous rebate is allowed for all the business his em-

¹¹ I. C. C. Rep., 1898, pp. 46-47 ; 7 I. C. C. Decis. 1898, p. 556 : Illinois Central, charging some shippers for storage while others are not charged for it, unlawful.

¹² Industrial Commission, iv, 541.

¹³ *Ibid.*, 543.

ployers send over the line. Or again, the railway company purchases from a favored trader its supplies of the goods in which he deals, at a fancy price.

The "expense bill system" has proved to be an instrument of preference and fraud. On presentation of an "expense bill" showing payment for shipments into Kansas City the railroads would allow reshipment of an equal weight from Kansas City to Chicago at the balance of the through rate from the point of origin to Chicago.¹⁴ This gave grain from the West an advantage over grain grown near Kansas City. When the rate from Kansas City to Chicago was 20 cents on wheat and 17 cents on corn the grain carried on the balance of the through rate under the expense bill system was carried 8 to 10 cents less than grain grown in Missouri and Iowa.¹⁵

Not satisfied with the discounts obtained on actual expense bills, shippers altered bills and forged new ones to enlarge their traffic at the cut rates. In this way "expense bills showing a high balance were constantly substituted for those showing a low balance."¹⁶

Rebate equivalents were given in the form of elevator rebates and allowances. Elevators owned or controlled by railroad companies were leased at nominal charges to favored shippers, or secret commissions were paid to favored parties for all grain consigned to specified elevators. One railroad for example paid a concern, holding a line of elevators on the railroad, $1\frac{1}{4}$ cents per 100 on all grain consigned to those elevators.¹⁷

¹⁴ Investigation of expense bill frauds on grain shipments from Missouri River points to Chicago and other destinations. I. C. C. Rep. 1896, p. 75, on Santa Fe case. 7 I. C. C. Decis. 1897, p. 240, expense bill system held illegal.

¹⁵ I. C. C. Rep. 1896, p. 79.

¹⁶ *Ibid.*, p. 77.

¹⁷ *Ibid.*, p. 80. The Commission has not felt able to declare such an allowance unlawful (10 I. C. C. Decis. 1904, p. 309), but it seems clear that substantial preferences may be given in this way.

In this case the consignment was 150 cars a day from November to May, averaging 32,000 to 34,000 lbs. a car. The commissions therefore amounted to \$4 a car, \$600 a day, \$120,000 a year.

The United States Industrial Commission says, under the head of "Freight discriminations and allowances to elevators:" "On each of the leading railways from grain-producing sections to Chicago, allowances, ranging from one-half to $1\frac{1}{2}$ cents per bushel, are made on grain to one or two favored firms. . . . The favored elevators are thus enabled to pay higher prices for grain. The average profit in handling grain is less than $1\frac{1}{2}$ cents per bushel, and smaller buyers can thus easily be driven out of business. . . . The small shipper being driven out of business, the large dealer is then in a position to depress the price of grain to the producer."¹⁸

The railroads deny equal rights in the building of elevators. A railroad which had granted the right for two elevators at Elmwood on the company's right of way refused to give H. & Co. the same privilege. The State Board of Transportation ordered the railroad to discontinue the discrimination against H. & Co., and give them the same privileges as others. But the United States Supreme Court held that the road could not be forced to grant its property for private use.¹⁹

One method of discrimination I learned of in the West a few years ago is not adequately described in any report.²⁰

The head of a road running into Chicago from Missouri River points formed a grain company to buy grain in Kansas City and sell it in Chicago. The railway guaranteed the grain company against loss. When wheat was 50 cents in Kansas City and 60 cents in Chicago, the grain

¹⁸ Report, U. S. Industrial Commission, 1900, iv, p. 79.

¹⁹ I. C. C. Rep. 1896, pp. 46-48.

²⁰ There is a statement concerning it in the I. C. C. Rep. 1896, p. 81, but it does not bring out the facts at the core of the matter as stated to me by the railway men.

company paid 51 cents in Kansas City to get the grain. The railroad charged the regular 10 cent tariff. The grain was sold at 60. The railroad paid back 1 cent on the guarantee and still made 9 cents. And the railroad-grain-company-combine was able to drive other buyers out of the market and other railroads out of the traffic. The Sante Fe, for example, carried 23 percent of the grain going into Kansas City, but only hauled 3 percent out to Chicago.

Railroads sometimes seek to evade the law by contracting to deliver goods at a certain price including the freight and the payment for the goods in one lump sum, so that the freight charge is merged and cannot be ascertained. Nine years ago, in 1896, the Chesapeake and Ohio Railroad contracted with the New York, New Haven and Hartford to deliver 2,000,000 tons of coal at New Haven at \$2.75 a ton. The published freight rate at that time was \$1.15 and the price of the coal at the mines \$2 a ton. The Interstate Commerce Commission held that this was a discrimination by the Chesapeake and Ohio Railroad against every independent mine owner in its territory, and that the railroad had no right to contract to sell coal at any price. The Federal Court sustained this view, and it is stated that the Department of Justice will ask the Supreme Court for a blanket injunction against the two railroads, restraining them from carrying freight at less than the published rates. It is said that J. Pierpont Morgan guaranteed that the Chesapeake and Ohio would perform the contract.

Action *against* an individual or company is quite as effective a form of discrimination as action in favor of a rival. Shippers at a certain place on the Chicago and Northwestern were handicapped by refusal of through rates on asbestos, compelling them to pay higher rates than their competitors.²¹ A Southern railroad charged the Bigby Packet Company a much higher rate on cotton from Mobile

²¹ 8 I. C. C. Decis. 1893, p. 316.

to New Orleans than the established rate on local shipments of cotton, in order to discourage shipments by way of the Packet Company from the point of origin in Alabama, and compel the cotton to travel all the way by rail.²²

²² I. C. C. Rep. 1894, p. 9.

CHAPTER X.

DENIAL OF FAIR FACILITIES.

THE refusal to furnish cars in fair proportion is a familiar form of discrimination all through this period, usually in combination with other forms of preference. In Kansas, on the line of the St. Louis and San Francisco Railway, were two coal companies whose plants were of about equal capacity, and several individual shippers. The railway and its officials became interested in one of the coal companies, and by rebate and other process it was given rates which averaged only forty percent of the rates charged other shippers. The result was that all the other shippers were driven out of business, part of them being hopelessly ruined before giving up the struggle. In addition to rate discrimination the railway practised gross favoritism in the distribution of cars. For example, during one period of 564 days, as was proven in court, the road delivered to the Pittsburg Coal Company 2,371 empty cars to be loaded with coal, although such company had sale for, and capacity to produce and load, during the same period, more than 15,000 cars. During the same time this railway company delivered to the Rogers Coal Company, in which the railway company and C. W. Rogers, its vice-president and general manager, were interested, no less than 15,483 coal cars, while 466 were delivered to individual shippers. In other words, the coal company owned in large part by the railway and its officials, was given 82 percent of all the facilities to get coal to market, although the other shippers

had much greater combined capacity than the Rogers Coal Company.

During the last four months of the period named, and when the Pittsburg Coal Company had the plant, force, and capacity to load thirty cars per day, they received an average of one and one-fourth cars per day, resulting as was intended, in the utter ruin of a prosperous business and the involuntary sale of the property, while the railway coal company, the railway officials, and the accommodating friends who operated the Rogers Coal Company, made vast sums of money; and when all other shippers had thus been driven off the line the price of coal was advanced to the consumer.

Another railway interested in a coal mine furnished cars in abundance to that mine and to others that would sell their product to the mining company in which the railway was interested, but systematically failed to furnish cars to other operators.¹ One operator, after being forced for years in this way to sell his product to the railway mining company at a very low price, was obliged to build a railway of his own in order to reach other lines of railroad and so have a fighting chance for cars.

In Arkansas a coal mine owned by the Gould interests was able to ship its product to market at very low rates, while the owners of an adjoining mine were forced to haul their coal to the same market in wagons because the rates charged them from the coal railway were so high as to absorb the whole value of the coal at destination.

A big capitalist in the West got hold of great oil fields on the Pacific slope, wonderful prospects, contracts to supply big cities, etc. Some one told him he had better see the railroads before he made his contracts. He thought

¹ It was held in the Nichols case (66 P. A. C. Rep. 768) that where a shipper orders cars to be delivered at a certain date, the company's action in filling subsequent orders before complying with the first is unlawful. (Oregon Short Line.)

the transportation question would be all right and went ahead. When he got his contracts made and wanted to ship the oil, he asked for cars, and then he found the transportation question was not all right. He could not get the cars.

Sometimes a railroad has arbitrarily refused to haul goods to certain consignees. A case of this kind came before the Texas Railway Commission in the case of the *Independent Compress v. Chicago, Rock Island and Texas Railway Company*. The Bowie Compress, located at the same station with the Independent, had some sort of pull which caused the railroad to refuse to haul cotton to that station unless consigned to the Bowie Compress. The railway also allowed compression charges out of the through rate on cotton shipped to the Bowie Compress, refused freight from points of origin, and reshipped the cotton from the Bowie press at through rates, while refusing such concessions to others.²

The refusal to deliver at a certain place may be as effective sometimes as the refusal to deliver at all. When in 1890 Mr. Nelson Morris tried to establish competitive stock yards in Chicago to get rid of the graft of the Union Stock Yards owned largely by railway interests, the Vanderbilts being in the lead, his enterprise was loudly applauded by the stock raisers of the West; but the railroads made short work of Morris. They simply refused to deliver to his yards the cars shipped there. They did not recognize any such place as the Morris yards and calmly hauled all cars to the old terminal. If Mr. Morris wanted them he must come and get them and pay switching charges. This ruined the venture.

Big shippers may be given an undue advantage by excessive difference between the rates on carloads and less-than-carloads.³ On June 29, 1898, the Western railroads

² Report, Texas Railway Commission, 1896, p. 11.

³ The Commission holds that the difference must not be so great as to be

advanced their less-than-carload rates to the Pacific Coast to a minimum difference of 50 cents a cwt. above the carload rate; and "on a great many commodities the difference is greater than the profit on the goods."⁴ The Interstate Commission regards a moderate reduction on carload shipments as fair, but will not sanction lower rates for cargo or trainload quantities than for carloads.⁵

destructive of competition between large and small dealers. (5 I. C. C. Decis. 638, following *Thurber v. New York Central, Delaware & Lackawanna, B. & O.*; and 3 I. C. C. Decis. p. 473, March, 1890; Rep. 1890, p. 87. Many articles of groceries were so classified as to make the difference between carload rates and less-than-carload rates unjustly great in violation of the principles of the Interstate Act.

⁴ Industrial Commission, iv, 207.

⁵ *Paine v. Lehigh Valley R. R.*, 7 I. C. C. Decis. 1897, p. 218.

CHAPTER XI.

CLASSIFICATION AND COMMODITY RATES.

CLASSIFICATION and commodity rates afford many examples of discrimination in the period we are studying. We find furs and fur scraps classed as double first-class, while hats and fancy products, for which these commodities constitute raw material, were first class.¹ Celery was classed with peaches and grapes, instead of with cauliflower and asparagus, lettuce and peas.² The charge for beans and peas (70 cents) was almost double the charge on tomatoes (44 cents).³ Flour for export was carried at much lower rates than wheat. Before 1886 wheat was carried from Texas, Missouri, and Kansas at 15 cents per hundred lbs. less than flour, without regard to distance. From 1886 to the end of this middle period the rates on wheat for export show a difference of 4 to 11 cents per hundred below the rates on flour. As the profit to American millers on flour for export is from 1 to 3 cents per hundred it is clear that such discrimination is prohibitive upon American millers in favor of English and other foreign millers. The public policy and good railway policy seem to require the same rate on export wheat and export flour.⁴ Corn was carried between Kansas points and Texas points for 7 cents

¹ 9 I. C. C. Decis. 78 ; 1901 Rep. 38.

² 5 I. C. C. Decis. 663.

³ 7 I. C. C. Decis. 43.

⁴ 8 I. C. C. Decis. 214, 1898. See also 4 I. C. C. Decis. 417, and 7 I. C. C. Decis. 481, Chicago, Milwaukee & St. Paul case, held that a higher rate on wheat than on flour is unjust.

per hundred less than corn meal, — a strong discrimination against Kansas millers.⁵ The Eastern railways also carried corn at lower rates than corn meal to Eastern mills, and carried the meal, hominy, ground corn, etc., back to Indiana. This gave the railways more traffic, but it was a tremendous waste of industrial force and injured the Western mills, since a discrimination of 5 percent was sufficient to eat up three or four times the profit of any miller.

The Southern Railway put soap in the sixth class with a rate of 49 cents a hundred, or 33 cents when shipped by large manufacturers, while Pearline was put in the fourth class with a rate of 73 cents a hundred. Pearline and soap are competitors. There is no appreciable difference in the cost of transportation. But Pearline commands a higher price, so the railways charged more than double the rate they got for soap from the manufacturers. In another case brought before the Commission in 1889, soap in carload lots was put in class V, while sugar, cerealine, cracked wheat, starch, rice, coffee, pickles, etc., were in class VI. One make of soap was put by many railroads in the second class, while other soaps of similar use and value were in the fourth class.⁶

One of the strangest anomalies of classification is the rating of patent medicines as first class, while ale and beer are third class. In a complaint on the latter score by a prominent manufacturer of patent medicines against the New York Central and other railroads, it was shown that the medicines were similar in bulk and intrinsic value to the liquors, and it is possible that the similarity went much farther than this.

Blocks intended for wagon-hubs took one rate on the Lake Shore and Michigan Southern and boards for wagon boxes another rate.

⁵ 8 I. C. C. Decis. 304. See also 3 I. C. C. Decis. 400, and 4 I. C. C. 417.

⁶ 4 I. C. C. Decis. 1891, p. 733: N. Y. Central, Pa., B. & O., C. B. & Q., Wabash, Santa Fe, etc., — a whole page full of railroads.

Railroad ties have been charged a higher rate than lumber. A high rate on railroad ties prevents their being shipped and depreciates their value at home, so that the discriminating company is able to buy them at a low price.

The Union Pacific years ago made prohibitory rates on steel rails in order to hinder or prevent the construction of a road that promised to become a competitor of one of the Union Pacific's connecting lines. Prohibitory rates on rails, ties, etc., have often been maintained to obstruct the building of competing lines, and to render them more costly.

CHAPTER XII.

OIL AND BEEF.

OIL in Standard hands continued to receive favorable attention from the railroads throughout the middle period. The Combine was preferred by an "unreasonable mileage" payment of $\frac{3}{4}$ of a cent a mile on its tank cars, loaded or empty,¹ while others who attempted to ship in tank cars had to pay mileage to the railroads for the return of their empties; by practically compelling independents to ship in barrels, and charging for the weight of the barrel; and by making an arbitrary allowance of 42 gallons for leakage on tank shipments with no allowance for waste in barrel shipments.²

The Commission held it unjust to allow for leakage on tank shipments and not on barrel shipments; that the weight of the barrel must not be charged for if the weight of the tank is not, the same quantity of oil must have the same rate no matter what the package might be, unless the shippers were offered facilities for shipment by tank as well as barrels so that the option was theirs. The representative of the oil combination was questioned by the Interstate Commerce Commissioners, in relation to the mileage, etc.

¹ Rice cases, Nos. 51-60, I. C. C. Decis. 1887, 65, 131.

² Rice v. R. R., 4 I. C. C. Decis. 131; 5 *ibid.*, 193, 415. Railroads commenced charging for barrel packages in 1888, and in a case tried in 1892 against the Reading, Boston & Maine, and other roads the Commission ordered them to cease, but they did not, and damages were awarded two years later from 1888 to 1894. A similar order to desist from charging for the barrel was issued against the Pennsylvania in September 1890 and it complied. I. C. C. Rep. 1895, pp. 33-35.

"Are you allowed mileage on tank cars?"

"No, sir."

"Neither way?"

"Neither way."

But the railroad officials in this case refused to commit oil-perjury. Asked what mileage they paid the Combine they replied: "Three-quarters of a cent a mile."

When Rice asked what the railroads would charge him for bringing back his empty cars if he shipped in tanks, he was told he would have to pay $1\frac{1}{2}$ cents or more a mile. He found that if he tried to sell his oil in California it would cost him \$95 to get the empty tank car back, while the railroads paid the Standard for the privilege of hauling its empties back. Rice saw that from the South he could get return loads of turpentine, but the railroads absolutely refused to give him rates.³

Besides all this the Standard was accorded the privilege of systematic underbilling. According to the testimony before the Commission in 1898 by the Boston & Albany agent in East Boston, the centre of the Standard Oil business in New England, the Combine's tank cars, which usually weigh from 35,000 to 50,000 lbs., were ordinarily billed at 24,000 lbs. Out of 14 cars sent over another road from East Boston to Newport, R. I., at least half were billed and paid for on the basis of 24,000 lbs. to the car, although their average weight was shown to be 48,550 lbs. per car. It was claimed that these underbillings were clerical errors. In considering the motives and reliability of such a claim we must not forget the curious habit shown by these clerical errors of piling up in great bunches in the Standard Oil business, and the still more curious fact that all the errors are in favor of the Trust—none against it. Long before the Commission had found that the railroads leading from the oil fields were in the habit of "blind bill-

³ Trust Investigation, Congress, 1888, pp. 531-533, 646--647.

ing" the Standard cars at 20,000 lbs., though the actual weight was frequently 30,000, 40,000, 44,000 or more.⁴ Rice complained of this to the Commission in July, 1887. Immediately all the old numbers on the 3000 tank cars of the Oil Trust were painted out and new numbers painted on, so that the cars mentioned in the railroad accounts could no longer be identified with the cars on the tracks.⁵ The Standard has some very oily ways, and knows how to use a pot of paint and a brush as well as a rebate.

The Standard desired to fix the rates on oil to New England, the South, and the West, and as usual the railroads let it have its way. The result was a practice of adding the Boston rate to the local rate on shipments of oil into New England, which puts the independent refiners at a great disadvantage. The rate on corn from Cleveland to Boston is 15 cents per hundred lbs., and to New Haven the same, but the rate on petroleum from Cleveland to Boston is 24 cents, and to New Haven it is the Boston rate, 24 cents, plus the local rate, or a total of 36 cents from Cleveland to New Haven. Now the Standard Oil has got large warehouses in East Boston, and they bring their oil by boat and store it there, and then they get the freight rates simply from Boston down to the Connecticut point, whereas the Western refiner who has no storehouse has to pay first the Boston rate, and then this local rate also to the other point, even though the oil may go direct, so that the rates are practically prohibitive to the Western refiners.⁶

To shut out the oil fields and independent refineries of Colorado and Wyoming, the Standard resorted to terrific discrimination in rates. The Chicago and Northwestern Road would bring a carload of cattle from Wyoming to

⁴ Testimony, Rice cases, 1 I. C. C. Decis. 28.

⁵ See Trust Investigation, Congress, 1888, pp. 598-599.

⁶ Lloyd's "Wealth against the Commonwealth," pp. 427, 480-481.

Chicago for \$105, but for a car of 75 barrels of oil the freight was lifted to \$348. The rates from the Western fields to San Francisco were also put very high, and the Standard built great storehouses on the Pacific Coast, which it fills from the Eastern fields, the freight rates from the East being suddenly lowered when it wishes to refill the said storehouses, and put back again as soon as they are full. The people of California are compelled to buy Eastern oil for the profit of the Trust, instead of buying Colorado oil, because the freight on the latter is prohibitive.

Aside from these sudden fainting spells of the oil tariff at convenient seasons for the Standard, the ordinary arrangements showed thoughtful care for its comfort. The regular rate on oil from the Colorado oil wells to the Pacific Coast was made 96 cents per hundred, while the rate from Chicago through Colorado is only 78½ cents per hundred.⁷

The Chicago pork-packers generally had things their own way in this period, but apparently not always. In 1890 the Commission decided that the railroads were discriminating against the Chicago packers by lower rates from the Missouri River on hog products than on live hogs.⁸ Even then, however, they were receiving rebates from the railroads which made questions of tariff rates comparatively insignificant.

In 1891 the Federal Grand Jury indicted Swift & Co., the Chicago packers, for having received \$5,000 a month in rebates from one road alone, the Nickel Plate. Compared to the train loads of their cars passing east and west on other lines, their traffic on the Nickel Plate was light.

In his testimony to the Senate Committee this spring, Mr. Davis said: "A few years ago one of the Chicago packers was a director on a Western railroad. He was a large receiver of live stock from Kansas City, upon which the freight rate was \$54 per car. A rebate of \$25 was

⁷ U. S. Industrial Commission, iv, 53.

⁸ 4 I. C. C. Decis. 158.

paid to the packer at the time of shipment, and it was the custom to file claims for the remaining \$29, which were allowed on the grounds of some imaginary loss or damage to the stock in transit. The same party paid rebates amounting to from \$30,000 to \$50,000 a month for every month in the year. On putting down on a piece of paper the amount of \$10,000, and after placing this under the eyes of a superior officer, he would leave and subsequently look for that amount in currency by express, and would then proceed to divide it among certain favored shippers.”⁹

A few years ago, in proceedings before Judge Grosscup of Chicago, it appeared that while the published rate on packing-house products was 23½ cents, the favored packers were given a rate as low as 15 cents.

Investigations by the Commission in December, 1901, and January, 1902, took the lid off of the dressed-meat business and discovered a large congregation of secret rebates. The Pennsylvania system was cutting the rate on packing-house products 5 to 7 cents below the published rate, making it 25 cents and sometimes 22 cents, in place of 30 cents, from Chicago to New York. Rates from Indianapolis, Cincinnati, and other points were also cut.¹⁰

The examination brought out the fact that President Cassatt and other officers above the traffic manager knew what he was doing and authorized or permitted the rate cutting.¹¹

“COMMISSIONER CLEMENTS. Who takes the responsibility for doing these things, for making these serious departures and cuts, in regard to the Pennsylvania Railroad? Is it you? Do you do it without any authority from the officers of that road above you, or do you have their approval of it?

⁹ Senate Committee, 1905, 3457.

¹⁰ Testimony of McCabe, Pennsylvania traffic manager, I. C. C. Beef Hearing, Dec. 1901, pp. 101, 102, 103.

¹¹ *Ibid.*, pp. 101, 102.

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"MR. McCABE. I am in charge of the freight traffic, and I do the best I can under the circumstances.

"COMMISSIONER CLEMENTS. Do you act independently of them, or do you have to have their approval?

"MR. McCABE. I assume to do what I think is proper, being governed by the competitive conditions.

"COMMISSIONER CLEMENTS. Do you have reason to know that the officers above you in the management of that company's affairs knew of it?

"MR. McCABE. Not in detail.

"COMMISSIONER CLEMENTS. I do not mean the details. I could have answered that myself. But as to the general fact that the Pennsylvania Railroad was cutting the rate in this serious way, was it known to the president of that company and other officers?

"MR. McCABE. I do not know.

"COMMISSIONER CLEMENTS. Have you ever had any conference with the officers above you in the management of that company's affairs in which you disclosed this condition of things?

"MR. McCABE. I have said to them from time to time that rate conditions were so and so; that rates were not being maintained, and that our competitors were cutting the rates.

"COMMISSIONER CLEMENTS. And that you must cut the rates? Did they sanction it, or approve it, or tell you to stop it?

"MR. McCABE. I think they left it to my discretion."

The Big Four, a Vanderbilt line, cut rates 6 cents below the 30 cent tariff from St. Louis.¹²

Mr. Mitchell, traffic manager of the Michigan Central, says his road carried dressed meats at 40 cents, or 5 cents below the published rate.

¹² Mr. Cost, traffic manager of the Big Four, I. C. C. Beef Hearing, Dec. 1901, p. 105.

"CHAIRMAN OF THE COMMISSION. Did you carry any considerable amount of dressed meats during 1901 that paid the tariff rate?

"MITCHELL. I think not.

"CHAIRMAN. Practically all of it went at some secret rate?

"MITCHELL. Yes, sir."

This man thought his road paid the four Beef-Trust houses \$200,000 or \$240,000 a year in rebates.¹³

Mr. Mitchell said rebates were paid indirectly by means of bank drafts. The railroad makes a deposit in bank. The traffic manager checks against it, and the bank supplies drafts on New York or cashier's checks which are sent to the persons who are to receive rebates.¹⁴

The railroads try to be good sometimes, make New Year's resolutions, and stop the rebates; but some naughty boy breaks his vows in two or three weeks, and then the rest follow suit. Here is the testimony of a Western traffic manager on this point.¹⁵

"COMMISSIONER. What proportion of the traffic (in provisions) have you carried at the tariff rate?

"TRAFFIC MANAGER. It was a very small proportion of the total, and it was probably along about the first of last year.

"COMMISSIONER. You are accustomed to indulge in New Year's resolutions?

"MANAGER. Yes, sir; we all swear off on New Year's, and begin again.

"COMMISSIONER. Is it a fact that from Jan. 1, 1901, there was a period when the tariff rate (on provisions) was actually applied by all the roads?

"MANAGER. Yes, sir; I think it was.

"COMMISSIONER. How long did it last?

¹³ I. C. C. Beef Hearing, Dec. 1901, p. 114.

¹⁴ *Ibid.*, pp. 113, 119.

¹⁵ I. C. C. Beef Hearing, Dec. 1901, pp. 85, 86.

"MANAGER. I think it lasted probably two weeks.

"COMMISSIONER. What led you, then, to cut your rate through St. Louis?

"MANAGER. Our agent in Kansas City discovered about January 20 that provisions were moving through Chicago at less than tariff rate."

The Commission found that all the railroads made low rates for the Beef Trust, but they could not find any railroad that led off in the business of cutting rates. Each one said it cut rates because it found the others were cutting. They were all followers.¹⁶

The Chairman of the Commission said to the Vanderbilt traffic man: "I observed that you spoke of your road as following the others.

"MR. COST. Yes, sir.

"THE CHAIRMAN. I have heard a similar statement from other gentlemen. Have you any idea who is the leader?

"MR. COST. No; I have not. I could not give you that information.

"THE CHAIRMAN. You have never heard of the leader?

"MR. COST. No, sir.

"THE CHAIRMAN. They are all followers.

"MR. COST. That does really seem to be the case."

Mr. Grammer, general traffic manager of the Lake Shore, testified in 1902 in respect to "provisions," cut meats, lard, etc., from Chicago to New York: "The minimum weight on a car of provisions is 28,000 lbs. The rate is 25 cents. That is about the maximum rate obtained this last year, 1901, and that means \$70 a car. We pay out of that to the stockyards \$2.40 a car for switching, we pay \$15 car-mileage for a round trip of the car, and at New York we pay 3 cents a hundred lighterage; that is, \$2.40 and \$15, \$17.40,

¹⁶ I. C. C. Beef Hearing, Dec. 1901, p. 107.

and \$8.40—\$25.80 which we pay out of that rate as absolute arbitraries. That leaves the Lake Shore \$16 or \$17 net for hauling that car to Buffalo, with the return car empty, and we have to give practically passenger service to that traffic. I think it is unremunerative business, and I have always taken the position that we do not want any provisions on the Lake Shore road at less than the full tariff rate, whatever that might be. The dressed-beef minimum will average 22,000 lbs. That car is subject to the same arbitraries and mileage. The lighterage is 3 cents a hundred, which would be \$6.60 instead of \$8.40, and it is subject to the same service eastbound and westbound as to movement; and there is not 1 percent of those cars loaded east with dressed beef that are loaded with any freight coming west." In spite of the unremunerative character of the business Manager Grammer says they cut the rate 5 cents a hundred.¹⁷

Mr. Paul Morton, at the head of the traffic department of the Santa Fe, testified in 1902¹⁸ that his road carried dressed meats and packing-house products below the published rates in violation of law.

"MR. MORTON. We have carried the business from Kansas City to Chicago for 5 cents less than the published tariff to Chicago and Chicago junction points.

"MR. DAY. Domestic as well as export?

"MR. MORTON. Both."

"The Santa Fe," he said, "at the beginning of 1901 joined with the other roads in a general declaration of good faith and intention of an absolute maintenance of rates. We maintained the rate until about April 1." The Santa Fe found that they were only carrying 2 percent of the packing-house business out of Kansas City, although they

¹⁷ I. C. C. Hearing in the dressed-meat cases, Chicago, Jan. 7, 1902, pp. 152-154.

¹⁸ Evidence in the I. C. C. Hearing in the dressed-meat cases, Chicago, Jan. 5, 1902, pp. 145, 148, 149.

brought in $33\frac{1}{2}$ percent of all the live stock that entered the city. So "we told one of the largest shippers in Kansas City that if they would come and ship with us we would give them 5 cents reduction from the tariff, and in order to get them we had to promise to do it for a year — I think until the first of July of this year, 1902."

Continuing, the witness admitted the illegality of the transaction.

"MR. MORTON. Yes, sir; it is an illegal contract. It was illegal when we made it, and we knew that.

"COMMISSIONER CLEMENTS. Can you tell how much you paid out in a year?

"MORTON. On this business?

"CLEMENTS. Yes, sir. Have you any idea whether it is \$50,000 or \$100,000 or \$10,000 — anything definite? Of course it is a mere guess and you do not know —

"MORTON. Well, I think there was a great deal more than any sum you mention paid out.

"CLEMENTS. By your company?

"MORTON. By all the companies. I think we paid out \$50,000 a year or more.

"CLEMENTS. Who would have the direction of that? Who would see that it was paid? Who would direct it to be done?

"MORTON. I would.

"COMMISSIONER PROUTY. How much does it cost your company on all its business in any one year to deviate from the published rates?

"MORTON. I should think between \$500,000 and \$1,000,000 a year."

By means of private cars, mileage payments, rebates, and control of rates, the big packers had advantages which enabled them to ruin the smaller packers all over the country. The Lincoln, Neb., Packing Company, for example, was "driven out of business," the manager says, "by freight discrimination, rebates, and the private car.

After doing a losing business for 5 or 6 years against these odds, the company closed down with a loss of 75 percent of the investment." And this is a fair sample of what has happened to many, many of the competitors of the Beef Trust.

CHAPTER XIII.

IMPORTS AND EXPORTS.

THE low rates in favor of foreign goods and of domestic goods intended for export amount to a serious discrimination. Paul Morton told the United States Industrial Commission that goods were carried from Hamburg to Denver for less than the rates from Chicago to Denver.¹ Complaint was made many years ago that the Pennsylvania Railroad and other roads charged lower rates, even 50 per cent lower, on goods shipped in from foreign countries than on domestic traffic of the same sort. Investigation revealed in some cases a far greater difference than 50 percent.

At one time the rate on tin plate from Liverpool via Philadelphia and the Pennsylvania Railroad to Chicago was 24 cents a hundred, while the rate from Philadelphia over the same road was 28 cents.

In the Texas and Pacific Case the record showed that books, buttons, carpets, clothing, etc., were carried from England, via New Orleans to San Francisco for \$1.07 a hundred, while the same articles of domestic manufacture paid \$2.88 on the same trains from New Orleans to Frisco. Boots and shoes, cashmere, confectionery, cutlery, gloves, hats and caps, laces and linens, etc., took the same blanket rate of \$1.07 from Liverpool and London to San Francisco, while similar American goods paid the railroads \$3.70 a hundred from New Orleans to California. In some cases

¹ Report, Industrial Commission, vol. iv, pp. 69, 493.

the railroads received only $\frac{1}{6}$ as much for the transportation of foreign goods as for domestic goods. The Interstate Commission held that "any difference in charge between foreign and domestic traffic is unlawful," and ordered the discrimination to cease, but after long litigation the United States Supreme Court decided that among the circumstances and conditions to be considered in judging rates are the conditions of ocean traffic and water competition to interior ports in the United States, etc., so that a carrier may be justified in making low rates to secure foreign freights which would otherwise go by competitive routes or not go at all.² The practical result appears to be that railroads may nullify the protective tariff and discriminate in favor of foreign shipments to any extent that is necessary to make them move, regardless of the question whether or no they ought to move under such conditions.

Foreign manufacturers cannot only ship their goods across the country more cheaply than our manufacturers can, or at least such of them as pay schedule rates, but can also get special rates on all raw materials they buy here

² Import Rate Case. *Texas and Pacific v. I. C. C.*, 162 U. S. 197, March, 1896. The complaint was brought in December, 1889, by the New York Board of Trade against the Pennsylvania Railroad and others. The New York Central, B. & O., B. & M., Ill. Central, Union Pacific, Southern Pacific, Northern Pacific, Texas & Pacific, etc., 33 railroads in all, were joined as defendants. The Commission held (Jan., 1891) that import traffic is entitled to no preference. 3 I. C. C. Decis. 417. (See also 4 I. C. C. 447.) The Circuit Court sustained the Commission in Oct., 1892 (52 Fed. Rep. 187), and the Court of Appeals in Oct., 1893 (57 Fed. Rep. 948), but the Texas & Pacific carried the case to the U. S. Supreme Court and the majority of the Court, reversing the Commission and the Circuit Court, interpreted the Commerce Act of Congress in such a way as to render substantially inoperative the main clauses relating to discrimination and the long haul, and practically nullify another Act of Congress so far as it imposes duties on imports for the purpose of protecting home industries. The Court accomplished this by focussing its attention on the phrase relating to dissimilar conditions, instead of aiming to enforce the act according to its clear purpose and intent. Chief Justice Fuller and Justices Harlan and Brown dissented, holding that the Interstate Act requires railways to make the same charge for the same service, whether the goods carried are domestic or foreign.

and ship over our lines for export. For example, a Chicago miller pays 21 cents per one hundred lbs. to get either wheat or flour to New York, while the English miller can buy wheat in Chicago and take it to New York for 13 cents. In some cases the rate on flour has been as much as 11 cents more than the rate on wheat. Since 2 or 3 cents a hundred lbs. is a good profit, our millers cannot grind for export against the English millers.³ The railroads turn down our millers and establish a protective tariff for free trade England, protecting her millers against competition.

American shippers take such advantage of the low export rates as they can, but sometimes these concessions are made to the shippers in one city and not to those of other cities; for example, the railroads carrying export flour from Minneapolis at a discount refused similar concessions to shippers at intermediate points.⁴

³ For many other facts along the same lines, showing rates on flour from the West to Baltimore, Philadelphia, New York, Boston, etc., 6 to 8 cents higher than the rates on wheat, and much lower rates on the same products for export than for domestic use, see Industrial Commission, 1900, iv, 70.

The Interstate Commerce Commission in 1899 found the export rates on corn and wheat much lower than the domestic rates. I. C. C. Rep., 1899, pp. 20-28, 31.

⁴ 8 I. C. C. Decis. 214 n.

CHAPTER XIV.

LOCALITY DISCRIMINATIONS.

DISCRIMINATIONS between localities, though less pronounced in this period than in the first, were nevertheless multitudinous and vital.

In 1896 the railroads carried Minneapolis flour to New York for 10 cents a hundred, while charging New York State millers 18 cents a hundred to New York City.

President Stickney of the Chicago and Great Western Railroad, in a discussion the same year with the representatives of other western roads before the I. C. C., said: "You charge the Kansas and Nebraska farmer 13 cents to haul his grain 200 miles while you charge the grain dealer 6 cents to haul that same grain twice as far to Chicago. . . . I have been acquainted with this northwestern country for thirty-five years. In all that time there has never been a year that the corn crop was moved until after the corn was in the hands of dealers who had the rate. Once the farmer is compelled to sell his grain, then you fellows cut the rate for the dealer." That is, the railroads charge the farmer shipping to the Missouri River a mileage rate 4 times as high as the rate to the dealers shipping to Chicago, and freeze out the small dealers from shipping to Chicago by making secret rates in favor of the big dealers.

Coal was shipped from Chicago to Omaha and then reshipped to Grinnell, Ia., 225 miles back toward Chicago, more cheaply than it could be got direct from Chicago.

"A large manufacturing establishment located in the latter town, making agricultural implements which were

sold principally on the Pacific Coast, found it advantageous to abandon its plant and transfer its machinery and employees to Chicago on account of the unfavorable rates.

"A large factory for making barbed wire, located in the city of Des Moines, in like manner abandoned its buildings and transferred its establishment to Chicago, finding that it saved a large sum on every carload of wire it shipped, although the wire was mainly carried directly by or through its old location, 300 miles nearer the Pacific Coast than Chicago."¹

To certain towns in Nebraska and other States the railways have extended the same rates that apply to Missouri River points, where the rates to Chicago are very low, while other towns in the same region have to pay the Missouri River rates to and from Chicago, plus the local rate from the river point.²

The extent to which railroads sometimes go in place discriminations is shown by cases cited in Cator and Lewis. One of the towns on the route of the Northern Pacific in Montana incurred the displeasure of the railway authorities, and they determined to ruin it and build up a new town. So they refused to stop their trains in the town or have a depot there. The railroad built a new depot on lands of its own, 3 miles beyond, and ran its trains through the old town to the new site, thereby feeding its revenge and enhancing the value of its own land at the same time,

¹ Lewis, "National Consolidation of Railways," p. 101.

² Industrial Commission, 1900, vol. iv, pp. 441-442. Shippers in Norfolk, Nebr. for example, pay the local rate of 45 cents per cwt. (on first-class goods) to Sioux City on the Missouri River, plus the rate from Sioux City to Chicago, while Fremont, a rival town near Norfolk, has the same rates as Sioux City, the local rate not being added in this case to the Missouri River rate. This gives Fremont manufacturers and shippers a decided advantage over those of Norfolk, and tends to build up Fremont and stunt the growth of Norfolk. The witness suggested that "if the rates were established by the Government instead of at the will and pleasure of the railway managers, it is a natural conclusion that points having the same general conditions would receive equal benefits."

at the cost of ruining the town already established. The courts sustained the railroad's claim that it had a right to run through to the new depot, though some of the judges dissented, regarding such favor as despotic and destructive of public rights.³

"A town in the State of Iowa, which had thriven under reasonable railroad facilities, was almost depopulated by a change of ownership of the railroad line upon which it depended.

"As the result of discrimination forty American families were driven out of this small town in a single year. Their property was rendered almost worthless, and with great pecuniary loss from no fault of their own they were obliged to abandon their homes and seek new habitations and new avocations. Cases like this were abundant throughout the West. This merely illustrates what was going on in a dozen great States where cities, towns, and villages were being depopulated or their business establishments placed at great disadvantage by reason of iniquitous discriminations."⁴

Peopled flocked into the towns and cities favored with the low rates, and when the competitive rates were removed, as they have been in many cases, the boom towns collapsed, and the inflated building and business interests shrunk to skin and bone.

Better accommodations are frequently accorded to places in which the railway or its officers are interested than to other places. When a new road is projected there are usually town-lot and land companies along the lines, in which prominent officials of the road may be directly or indirectly interested. Their knowledge of the future location of the road is utilized in purchasing tracts of land at low values to be used for town sites and sold at high prices after the railway is built.

³ Cator's "Rescue the Republic," p. 15.

⁴ "National Consolidation of Railways," Lewis, p. 102.

"Sometimes the entire road becomes a land-grabbing scheme with a town-lot speculation attachment. The western half of one of the principal roads in Iowa was built mainly on this plan. Its natural route was along one of the old stage roads running through the county seats of the counties through which it must pass. About these towns was a well-settled country, with rich farms well improved for that early day. The towns were moderate in size, but had been established as trading points for many years, and stores, schools, and churches had grown up.

"But there was a belt of government land lying between the two belts of settlement about the respective county seats, which the road coveted, and if the line passed through the old towns there would be little chance for the speculative directors to profit by laying out town sites. So the road was laid out and built through the unsettled lands, avoiding every old town on its route." ⁵

Sometimes discriminations are made by the use of different classifications for local and through traffic.⁶ The rate on sugar from San Francisco to Kearney, Neb., was 77 cents per hundred lbs., against 50 cents, clear through to Omaha.⁷ The rate on lumber from Wilmington to Philadelphia and Boston was higher than the local rate from Wilmington to Portsmouth or Norfolk plus the rate from Portsmouth or Norfolk to Philadelphia or Boston.⁸

The rates from the East to St. Cloud, Minn., were higher than to St. Paul and other more distant points. The difference against St. Cloud was 7 cents per hundred on flour and 75 to 85 per ton on coal. This difference was

⁵ "National Consolidation of Railways," Lewis, p. 83.

⁶ *Martin v. Southern Pacific, Central Pacific, and Union Pacific Railroads.* 1 I. C. C. Decis. 1.

⁷ 8 I. C. C. Decis. 481. The Commission made an order that the Kearney rate should not exceed the Omaha rate by more than 15 cents, but the Southern Pacific refused to obey, and the Circuit Court declined to enforce the order on the ground that the Commission had not found the rate to Kearney unreasonable in itself, but only in comparison, citing 190 U. S. 273.

⁸ 9 I. C. C. Decis. 17: Rep. 1901, 30.

two or three times the profit made by the miller, so that the price of wheat in St. Cloud was 6 cents below the price in Minneapolis or Princeton or Elk River, and the value of land about St. Cloud was thereby greatly lessened.⁹

A canning factory in Emporia, Kansas, had good natural advantages and an excellent trade in Kansas, Colorado, Texas, etc., when in 1891 the freight rates were changed on the basis of water and rail competition via Galveston so that canned goods could be shipped into this territory from New York at rates that drove the Emporia factory out of business with a loss of \$50,000 and the ruin of the owner who had been the heaviest tax payer in the county.

The Emporia furniture factory, and the Emporia stock-yards have also been ruined, it is said, by freight discriminations. In the Spokane case the rate to Portland, 2056 miles from the East, was \$30 a ton, while the rate to Spokane, only 1512 miles, was \$52 per ton. The Commission said this was unreasonable. "If a rate of $1\frac{1}{2}$ cents per ton-mile yielded a desirable margin over the cost, a rate of $3\frac{1}{2}$ cents pays an unwarranted return." In a Georgia case it appeared that the rate from Cincinnati to a non-competitive town, Marietta, was 6 times as much per ton-mile as the rate to Atlanta. The business men of Spokane paid 2 or 3 times as much for haulage as the men of Portland, and the business men of Marietta paid 6 times as much in proportion as those in Atlanta.

The Spokane merchants combined and put their freight business in the hands of one agent, who could swing every pound of freight to the Northern Pacific or to the Oregon Navigation Co., or to the Great Northern, etc. Then the railways pooled against the merchants. The latter adopted the policy of tendering a reasonable sum for freight, and if the railways would n't take it, the merchants replevied the goods and left the companies to sue for the freight. The

⁹ I. C. C. Rep. 1899, p. 31.

companies got tired of that and made some concessions. But Spokane still suffers from severe discrimination, as we shall see hereafter. Coal hauled fifty miles to Leadville sold there for \$7 a ton, while in Denver, after an additional haul of 150 miles, the same coal was sold for \$5.50 a ton. The Michigan Central and other roads charged higher rates on carriages and buggies to San Bernardino than to Los Angeles, some distance further on.¹⁰

From Pittsburg to Colorado the rate on rails was \$1.60, while the rate all the way through to San Francisco was only 66 cents. From Pueblo to San Francisco, 1,559 miles, the rate on bar iron and on rails was \$1.60 per hundred, while from Chicago to San Francisco, 2,418 miles, the rates were 50 cents on bar iron and 60 cents on rails; and even from New York to San Francisco the same rate of 60 cents was made for rails.¹¹

Sometimes the charge is much greater going one way between two given points than it is going the other way between the same points. For instance, "Gloves from San Francisco to Denver pay \$2 a hundred. You ship the same packages back from Denver, which has 5,000 feet of elevation, to San Francisco at the sea level, downhill, like a toboggan slide, and it is \$3 a hundred downhill to \$2 up." ¹²

¹⁰ The Commission ordered the roads to discontinue this practice. They refused. And the United States Supreme Court sustained them in their refusal. (4 I. C. C. Decis., July, 1890, p. 104; Rep. 1901, p. 25.)

¹¹ Nov. 1895, the Commission ordered that the rates from Pueblo to California should not exceed 75 percent of the rates from Chicago to California. The railroads refused to obey. Proceedings in court were begun by the Commission to enforce their order. Then the railroads yielded. They kept the rates down about 2 years, till Oct. 17, 1898. Then the Southern Pacific increased the rates. The Colorado Fuel & Iron Company on whose complaint the investigation and order were made, sued for damages and an injunction, Oct. 1898. The Circuit Court enjoined the railroads from charging more than the rates fixed by the Commission. But April 16, 1900, the Circuit Court of Appeals reversed the decision on the ground that the United States Supreme Court had ruled that the Commission cannot fix rates. (I. C. C. Rep. 1895, pp. 41-43; and Rep. 1900, pp. 55-61; also (101 Fed. Rep. 779) an appeal to the Supreme Court was dismissed per stipulation, Nov. 1901 (46 L. Ed. 1264).)

¹² Ind. Com. iv, 257.

The discriminations against Denver are severe both from Eastern and Western points. Sugar is carried from San Francisco to Denver at 75 cents; to Loveland it is 93 cents; but hundreds of miles further on, to Omaha, it is only 50 cents.¹³ "Mr. Kindel has been driven out of the manufacture of upholstering goods and of spring beds in Denver because of similar differences. He wished to manufacture albums in Denver, but was forced to locate in Chicago because the freight rate on books from Chicago to San Francisco was \$1.75 per hundred and from Denver to San Francisco \$3, while the Denver manufacturer had to pay 97 cents freight on his raw material (paper, etc.) from Chicago to Denver, \$3.97 against \$1.75. So too, the freight rate on books from Chicago to New York is 75 cents, from Denver to New York \$2.72." ¹⁴

"The difference in rates on coal oil has been so great that oil has sometimes been shipped from Chicago to San Francisco and back again to Denver."

"Boots and shoes are carried from Chicago to Colorado common points at \$2.05 per hundred, from Chicago to California at \$1.50 per hundred. If a jobber in Colorado wishes to ship boots and shoes to California he must pay \$3, making a total freight rate of \$5.05 from Chicago to California in this way. Cotton piece-goods under commodity rates are shipped from Boston to the Missouri River for 52 cents per hundred, while the rate from the Missouri River to Denver is \$1.25 for a haul of one-third the distance. The rate from the Missouri River through Denver to California is only \$1." ¹⁵

No wonder a Denver manufacturer said to the Industrial Commission: "My city, Denver, and State, Colorado, and all the territory embraced in the one hundred and fifth meridian section, are violently discriminated against by the

¹³ Ind. Com., iv, 257.

¹⁴ *Ibid.*, 67.

¹⁵ *Ibid.*

railroads and express company. We are denied commercial equality, which forbids the development of our resources. Our freight rates are anywhere from 100 to 300 percent higher per ton per mile than those of our Eastern and Western competitors." ¹⁶

Such conditions tend to force dealers to points on the Missouri River or east of it. The shipper at St. Joseph on the Missouri River, for example, can get goods from Chicago at 80 cents and reship to San Francisco for \$1.50, while the Denver shipper must pay \$2 from Chicago to Denver and \$3 from Denver to San Francisco, — \$5 for the Denver shipper against \$2.30 for the St. Joseph man.¹⁷

¹⁶ Ind. Com. iv, 252.

¹⁷ *Ibid.*, 257.

CHAPTER XV.

LONG-HAUL DECISIONS OF THE SUPREME COURT.

THE long-haul clause did not realize the intent of its framers. It received a series of shocks from the United States Supreme Court, which produced, if not paralysis, at least a bad case of nervous prostration.¹

At first, believing that the law would be enforced in accordance with its purpose and intent to get rid of unjust and needless discrimination between localities, the Northern and Western roads revised their tariffs in good faith in reference to long and short haul rates, but, later, when they found that the Supreme Court did not intend to enforce the 4th section, they joined the Southern roads in practical disregard of it wherever they found it convenient to do so, and only in a few cases has their disregard been checked.

Within 5 days after the Commission was appointed a large number of railroads applied for relief from the long and short haul clause; and in many cases, on the ground of

¹ Alabama Midland Case. Decis. of U. S. Supreme Court, Nov. 8, 1897, 168 U. S. 144; Behlmer Case, 175 U. S. 648, 676; 181 U. S. 1, 29; Dallas Case, I. C. C. Rep. 1901, p. 27. Actual and controlling competition of any sort is now held to justify a less charge for the longer than for the shorter haul. 10 I. C. C. Decis. 289, June, 1904. See also Senate Committee, 1905, 3339, where Chairman Knapp of the Interstate Commission declares that the courts have interpreted the law so that if the circumstances substantially differ, no matter what the reason, the prohibition does not apply. Brooks Adams says, "The Supreme Court is antagonistic to that clause," (the long and short haul clause) and does not intend to enforce it. "They have simply thrown out every suitor but one who came in under that clause." (Sen. Com., 1905, p. 2922.)

water competition, etc., relief was given.² The Commission held that dissimilar circumstances existed under the 4th section in case of competition with water carriers, or railroads not under the Act (foreign railroads and railroads lying wholly within a single State), and in "rare and peculiar cases of competition between interstate railroads, when a strict application of the rule would be destructive of legitimate competition,"³ but ordinarily competition between interstate roads was not regarded as sufficient to relieve them from the 4th section.

In November, 1892, the Commission decided the famous Alabama Midland Case. The complaint was that rates from the East and Northeast to Troy, Ala., were higher than to Montgomery, a longer haul passing through Troy. The railroads pleaded competition at Montgomery. The Commission held that railway competition would not justify departure from the rule of Section 4 of the Interstate Act. Five years later, in November, 1897, the United States Supreme Court sustained the judgment of the Circuit Court and Circuit Appeals Court, overruling the Commission, and held that the existence of railway competition at Montgomery made a substantial difference of circumstances within the meaning of the exception in Section 4.⁴

The Court held that competition even of interstate lines is a substantial difference of conditions which may justify a greater charge for a short than for a long haul, but said, "We do not hold that the mere fact of competition,

² I. C. C. Rep. 1887. Nearly a hundred pages are filled with both the statements and petitions of railroads relating to the long-haul clause. See also Rep. for 1895, pp. 24-28. Exemption from the long-haul clause was allowed in the case of passenger fares to the World's Fair at Chicago.

³ *In re Louisville and Nashville*, 1 I. C. C. Decis., 1887, p. 31. See also *Ga. Rd. Commission v. Clyde Steamship Co.*, 5 I. C. C. Decis. 326.

⁴ *Alabama Midland or Troy Case*, 168 U. S. 144, 164, 166. Reference was made to 31 Fed. Rep. 315, 862; 50 Fed. Rep. 295; 56 Fed. Rep. 925, 943; 71 Fed. Rep. 835, Behlmer Case; 73 Fed. Rep. 409, *I. C. C. v. Louisville and Nashville*.

no matter what its character or extent, necessarily relieves the carrier from the restraints of the 3d and 4th sections."

In the 2d section, which prohibits any rebate or discrimination and is intended to enforce equality of shippers over the same line, "'similar circumstances and conditions' refers to matters of carriage, and does not include competition between rival routes;" but in the 3d and 4th sections "similar circumstances and conditions" includes competition, which "is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed, and substantially dissimilar." The railroad people think the circumstances are very dissimilar also when the Oil Trust or the Beef Combine threatens to take hundreds of thousands of dollars worth of business if they don't get the rates and facilities they want, while Messrs. A. B. C., etc., ship their goods and pay the schedule rates without suggesting any reduction. This dissimilarity is harder for the railroads to deal with than the other. They can stop competing among themselves on long-haul schedule rates more easily than they can enforce equal rates on the big shippers.

In the Chattanooga Case it appeared that rates from New York and other points via South Atlantic points to Chattanooga were higher than to Nashville, 152 miles further on. The Commission in December, 1892, ordered this discrimination to cease. The order was not obeyed. Suit to enforce it was brought in the Circuit Court, and a decision sustaining the Commission was rendered in February, 1898. And in November, 1899, the Court of Appeals confirmed the decision, holding that the ruling of the Supreme Court in the Midland Case did not apply, because "normal competition" would give Chattanooga the same rates as Nashville.⁵

⁵ I. C. C. Rep. 1899, pp. 66-68; 85 Fed. Rep. 1898, p. 107; 99 Fed. Rep. 1899, p. 52.

But the Supreme Court in 1901 reversed the lower courts and decided against the Commission.⁶

The Georgia Railroad Commission Cases, also decided by the Interstate Commission in 1892, went the same way, the United States Supreme Court again deciding against the Interstate Commission on the long and short haul clause, holding that any substantial competition of markets or railways creates dissimilar conditions within the 4th section.⁷

The result is that dissimilarity of conditions created by the railroads themselves becomes the means of freeing them from the long-haul rule of the 4th section of the Interstate Act.

In the South a method called the "basing-point system" is in vogue. The railroads name certain towns as distributing centres and competing points, fix the rates to and from these points, and make rates to and from other localities by adding to such through rates the local charges in force between the distributing centres, or "basing-points" and the said other localities.

The Commission says: "Our annual reports to Congress and reported decisions in cases have uniformly condemned this distributing centre theory of rate-making, but the Southern carriers have resisted our efforts to correct the practice."⁸

A thoughtful writer in the *Popular Science Monthly* says: "The most serious class of unjust discriminations includes those which have for their victims the entire populations of towns, cities, and even extensive districts, which are made to suffer from the unfair adjustment of railway rates. Practically the whole region south of the Potomac and Ohio and east of the Mississippi has continuously

⁶ 181 U. S. 1, April, 1901.

⁷ *Ibid.*, 29, 1901.

⁸ Rep. 1895, p. 29. See Louisville & Nashville Case, 1 I. C. C. Decis. 31; C. B. & Q. Case, 2 I. C. C. Decis. 46; Krewer Case, 4 I. C. C. Decis. 686; Nashville, Chattanooga and St. Louis R. R. Co., 6 I. C. C. Decis. 343. See also 8 I. C. C. Decis. 503.

suffered from discriminations of this kind through the system of making charges to a few selected cities the basis for through rates to all other points. Through rates are made to and from about two hundred of the larger towns, including Atlanta, Birmingham, Chattanooga, Vicksburg, New Orleans, and Mobile, and traffic shipped from or to all other points is charged the rate to one of these basing-points plus the local rate from such basing-points to final destination. In practice it is common to make the combination by the use of rates to and beyond whatever basing-point will give the lowest total, whether on the line traversed by the shipment or not. Thus a shipment from Cincinnati to a point on the line from that city to New Orleans may be charged the full rate to New Orleans plus that from the latter back to the local point. The condemnation of such a system cannot be too severe. It not only limits the commercial activities of the towns unjustly discriminated against and restricts the sources from which they can directly draw supplies, but by hindering their growth it retards the development of the entire section, including the cities supposed to be favored.”⁹

In a case decided in 1894 it was found that hay was being carried from Memphis through Summerville to Charleston for 19 cents a hundred, against 28 cents a hundred from Memphis to Summerville, the 9 cents difference being equal to the local rate from Charleston back to Summerville. “The difference of \$1.80 per ton was sufficient to preclude the Summerville dealer from selling in neighboring towns in competition with Charleston dealers. The Summerville dealer was thus practically confined to Summerville for a market, and even there had to compete with dealers doing business at Charleston 19 miles away. If \$3.80 per ton is profitable to the carriers for bringing hay in carloads from Memphis to Charleston, then \$5.60 per

⁹ H. P. Newcomb, *Popular Science Monthly*, p. 815, Oct. 1897.

ton, nearly 50 percent more, from Memphis to Summerville, which is nearer than Charleston is to Memphis, represents an extra profit of \$1.80, which the carrier did not and could not show to be equalled by extra cost of transporting a car of hay and delivering the same at Memphis." The Commission (June 1894) ordered the carriers not to charge more from Memphis to Summerville than from Memphis to Charleston, holding that competition of markets or of railways would not justify a higher charge for a shorter than for a longer haul. The order was made in September. In its report to Congress in December the Commission said, "The order has not been obeyed."¹⁰

Social Circle, situated between Atlanta and Augusta in Georgia, was required to pay a rate from Cincinnati made up of the rate to Atlanta plus the local rate from Atlanta to Social Circle, while Augusta, considerably more distant, had rates from Cincinnati no higher than those to Atlanta. The Commission in June, 1891, ordered the railroad to cease charging more from Cincinnati to Social Circle than for the longer distance to Augusta.¹¹

Hill and Brother, in the wholesale grain, flour, and hay business at Cordele, Ga., were in competition with dealers at Albany, Americus, and Macon, which were made basing-

¹⁰ I. C. C. Rep. 1894, p. 19; 1900, p. 52. The Railways declined to obey; the Circuit Court ruled against the Commission (71 Fed. Rep. Jan. 1896, p. 835); the Circuit Court of Appeals reversed the Circuit Court decision (83 Fed. Rep. Nov. 1897, p. 898); and finally, in Jan. 1900, the U. S. Supreme Court reversed the Court of Appeals and sustained the railroads. (Behlmer Case, 175 U. S. 648.)

¹¹ I. C. C. Rep. 1895, p. 29; 1896, pp. 16-23. In March, 1896, the U. S. Supreme Court considered the case on appeal, and apparently accepted the decision of the Commission on the question of similar conditions, but overruled another part of its order, requiring the railroad not to charge more than \$1 per hundred on first class goods from Cincinnati to Atlanta. The Court placed its decision on the ground that the Commission has no authority to fix rates, maximum, minimum, or absolute. It may determine that a past rate is unreasonable, but cannot fix a rate for the future. *Interstate Commission v. Cincinnati, New Orleans, and Texas Pacific*, 162 U. S. 184; and 167 U. S. 479. *I. C. C. v. Texas and Pacific*, 162 U. S. 197.

points and had lower rates than Cordele from the common source of supply. Cordele was shown to be nearer the coast than the other points, and to have several railway routes from Nashville, so that it could not be excluded from the low rate list on competitive grounds. The railroad men said it was excluded because it was not so large a distributing point as the other places, but admitted that if it had equally low rates it would largely increase as a distributing centre; so that the case stood thus: The railroads did not give Cordele equally low rates because it was not a sufficiently large distributing centre, and it was not a sufficiently large distributing centre because it was denied equally low rates; *i. e.*, the railroads sought to excuse themselves for wrongdoing by offering the results of the wrong in justification. The Commission refused to allow the railroads to take advantage of their own wrong and condemned the Cordele rates.¹²

The Louisville and Nashville charged \$3.69 per ton on pig iron from Birmingham, Ala., to Cordele, Ga., 267 miles, and only \$1.80 a ton from Birmingham to Macon, 332 miles. On coal the rate was \$2.60 to Cordele and \$1.60 to Macon. The Commission decided that the rates to Cordele should be no higher than to Macon.¹³

La Grange is 71 miles nearer New Orleans than Atlanta, yet the rates to La Grange were made so much higher than to Atlanta that an Atlanta dealer could ship goods from New Orleans through to Atlanta and then back to La Grange as cheaply as the goods could be shipped direct to La Grange.¹⁴

¹² 6 I. C. C. Decis. 343; and Rep. 1895, pp. 29-31.

¹³ Rep. 1895, p. 31.

¹⁴ I. C. C. Rep. 1899, p. 68; 7 I. C. C. Decis. Dec. 1897, p. 431. The Commission ordered that the charge to La Grange should not exceed the rate for the longer haul to Atlanta, and two years later the Circuit Court sustained the order (102 Fed. Rep. 709), but the Circuit Court of Appeals reversed the decision in May, 1901 (108 Fed. Rep. 988), and in May, 1903, the Supreme Court affirmed the ruling of the Court of Appeals against the Commission (190 U. S. 273).

To keep traffic from going to Savannah and make it go to the Northwest or to Pensacola, the Louisville and Nashville made very high rates on shipments to Savannah. On Savannah traffic the Nashville haul was short and the receipts small; on shipments to the Northwest the Nashville receipts were much larger, and in Pensacola it had a special interest. So the Savannah cotton rate was advanced from \$2.75 to \$3.30 a bale, and the rates on naval stores were also made much higher than to Pensacola or to the Northwest.¹⁵ The Commission ordered the railroad to discontinue the discrimination against Savannah, January, 1900, and the Circuit Court sustained the decision, July, 1902.

The Commission has condemned the rates from New Orleans to Danville, Va., as excessive in comparison with the rates on the longer haul to Lynchburg;¹⁶ also the rates on sugar and molasses from New Orleans to Nashville as higher than on the long haul to Louisville;¹⁷ the rates from New York, Cincinnati, Chattanooga, Nashville, and New Orleans, as discriminating against Dawson and in favor of Americus, Eufaula, and Albany;¹⁸ undue preference to Sioux City against Sioux Falls, in the rates from Chicago and Duluth;¹⁹ and many other discriminations between localities, and violations of the long and short haul clause;²⁰ yet all the complaints and decisions,

¹⁵ I. C. C. Rep. 1902, p. 48; 7 I. C. C. Decis. 431; 8 I. C. C. Decis. 377; 118 Fed. Rep. 613; Sen. Com. 1905, pp. 2316, 2317, 2926. No appeal appears to have been taken from the Circuit Court.

¹⁶ 8 I. C. C. Decis. Feb. 1900, p. 409; Rep. 1900, p. 34.

¹⁷ 8 I. C. C. Decis. 93, reversed by the Circuit Court, August, 1902 (117 Fed. Rep. 741), and by the Court of Appeals, May, 1903 (122 Fed. Rep. 800); now on appeal to U. S. Supreme Court.

¹⁸ 8 I. C. C. Decis. 142.

¹⁹ I. C. C. Rep. 1895, p. 39.

²⁰ See 6 I. C. C. Decis. 257, 361, 458, 488, 568, 601; 7 I. C. C. 61, 224, 286; 8 I. C. C. 93, 214, 277, 290, 304, 316, 346. See also vol. 9 of the Decisions, and Rep., 1898, pp. 33, 246; 1899, p. 28; 1900, p. 40; 1901, pp. 57, 65; etc. Wherein conditions substantially differ the exemption is applied. For example, the Santa Fe is justified in charging lower rates from the

numerous as they have been, are but a cupful from the sea; and the evils removed in pursuance of orders of the Commission which the Courts neglected to overrule form an insignificant group compared to the mass that remained untouched.

Pacific to the Missouri River than to Denver on rice, hemp, blankets, books, boots, etc. (9 I. C. C. Decis. 606); and a higher rate on lumber to Wichita from Western points than to Kansas City is approved (9 I. C. C. Decis. 569).

Rates of an individual road cannot be compared with joint rates made by that road with others. Osborne Case, 52 Fed. Rep. 912; Tozer Case, 52 Fed. Rep. 917; Union Pacific Case, 117 U. S. 355.

CHAPTER XVI.

TEN YEARS OF FEDERAL REGULATION.

IN "A Decade of Federal Railway Regulation," after describing various forms of discrimination, H. T. Newcomb says: "The conditions described are fairly typical of those existing all over the United States. The Interstate Commerce Law has mitigated but slightly, if at all, the evil of unjust discrimination between individuals, has in but few and relatively insignificant instances moderated unjust discriminations between articles or classes of traffic, and has almost wholly failed to remedy the far more serious inequities in rate-making, which operate to the disadvantage of towns, cities, or districts."¹

In 1897 the President of the Big Four Railway said: "Never in the history of railways have tariffs been so little respected as to-day. Private arrangements and understandings are more plentiful than regular rates. The larger shippers, the irresponsible shippers, are obtaining advantages which must sooner or later prove the ruin of smaller and more conservative traders, and in the end will break up many of the commercial houses in this country and ruin the railways. A madness seems to have seized upon some railway managers, and a large portion of the freight of the country is being carried at prices far below cost. . . There is a much more dangerous view, and that is the demoralization of the men conducting these numerous enterprises and the want of respect for the law which is being

¹ *Popular Science Monthly*, Oct. 1897, p. 816.

developed by the present situation. . . . There is less faith to-day between railway managers, with reference to their agreements to maintain tariffs, than was probably ever known on earth in any other business. Men managing large corporations who would trust their opponent with their pocket-book with untold thousands in it, will hardly trust his agreement for the maintenance of tariffs while they are in the room together. Good faith seems to have departed from the railway world, so far as traffic agreements are concerned.”²

The Texas Railway Commission in 1897 started suits against several railways for discriminations, and before the end of the year three railways pleaded guilty in 95 cases and paid fines amounting to \$47,500, promising to “be good.” The next year \$20,000 more were paid by the railways as fines in 20 cases for violation of this law in Texas. Many other cases pending.³ In the 1898 Report the Commission says that express and railway agents do a business as shippers of fruit, etc., and discriminate against the business of other shippers by underbilling their own shipments and by delaying the other shipments.

One of the most striking illustrations of the effectiveness of the Interstate Act is to be found in the results of the Boston and Albany investigation in 1900, during the consideration of the question of leasing the road to the New York Central. The Interstate Act made it a misdemeanor to depart from the published rates, but the railroad followed the law only when it was convenient to do so, and most of the rates in actual use constituted misdemeanors.

“Various shippers, merchants, manufacturers, etc., were visited, and it was found that the local rates were not followed, that shippers were receiving widely varying dis-

² M. E. Ingalls, before National Convention of Railway Commissioners, 1898, p. 14.

³ Rep. 1897, p. 6; and 1898, p. 15.

counts from the published rates, and that shippers did not know at all what rates their competitors and neighbors were getting. They were not satisfied with the system, but they were afraid to complain, for if they made complaint they would lose whatever advantages they possess and become marked men for railway persecution. The Railroad Commission of Massachusetts advertised for shippers who were not satisfied to come and make complaint; but they did not do so, for the reason that any shipper who complained of a railroad would be apt to fare a good deal worse afterwards than before; his goods would be delayed, his facilities would be cut off and whatever reductions he was getting would be stopped, and he would have to pay the full published rates. He might also be involved in costly litigation, and he did not dare to say anything.

“The Railroad Commission was asked by the legislature about these discriminations on the Boston and Albany, and a report was handed in by the Commission (1900) saying that the reductions from the published rates averaged 40 percent, and that in different cases they ran from 10 to about 73 percent — fully confirming what the shippers had said. It was admitted, however, that this report was not written by the Railroad Commission. They had passed the question over to the Boston and Albany, and a high official of the road had written the reply. The Railroad Commission admitted that they did not know anything about it. They, however, handed in the report of the railroad official as being true, and it was admitted, both by the railroad, and by the Commission, that these discounts on local rates were being given. The railroad official claimed that the special rates were ‘open to all shippers sending freight under similar circumstances and conditions,’ which may be true if we understand ‘circumstances and conditions’ to include the relations of the shipper to the managers, and his pull with the railroad, but cannot in any other way be made to square

with the statements of shippers and the other evidences in the case."

While favored shippers were receiving discounts of 10 percent to 73 percent from the published rates, other shippers, and some doing considerable business, declared that they got no discount at all. During the legislative investigation the matter was put to Samuel Hoar, attorney and director of the Boston and Albany, and he said: "I suppose it is true that no shipper knows what his rival is getting. I suppose it is true. But what of it? What has that to do with the lease?"

The receipts per ton-mile on all classes of freight were less than one-half the average of the published rates to the various stations on the road for the cheapest class of freight, viz., coal. And the lowest published local rate on coal was higher than the average rate on all commodities.

"The interstate-commerce law was passed in 1887 and the Interstate Commerce Commission was established to abolish the evils of unjust discrimination, but the work has not been accomplished. The Interstate Commerce Commission has told us year after year that the discriminations are still going on; and that they cannot be stopped under present laws at least."⁴

Mr. George R. Blanchard of New York, former commissioner of the Joint Traffic Association told the Industrial Commission⁵ that "Discriminations against persons result from secret rebates, combination of rates on inward material and outward products, so as to affect the through charges; favoritisms in terminal facilities; quicker time in transit; unequal or hidden allowances in weights; dissimilar stor-

⁴ "The exaction of the published rate is the exception. . . . Men who in every other respect are reputable citizens are guilty of acts which, if the statute law of the land were enforced, would subject them to fine or imprisonment." See Rep. 1898, pp. 5, 6, 18, 19; Rep. 1899, p. 8.

⁵ Report, vol. iv, 1900, p. 625.

age periods in cars or warehouses ; preferences in supplying cars ; differences in special charges, such as switching, loading or unloading, or in cartage allowances ; the leasing of elevators to or making elevator contracts with large handlers of grain, to their exceptional advantage ; the grant of undue allowances under the fictitious guise of commissions, etc."

Summing up the evidence gathered in its great investigation, 1900-1901, the United States Industrial Commission concludes that the main effect of the Interstate Act has been to concentrate the benefits of discrimination in fewer hands,⁶ which tends to build up trusts and combines. It found discriminations everywhere prevailing. It says: "There is a general consensus of opinion among practically all witnesses, including members of the Interstate Commerce Commission, representatives of shippers, and railway officers, that the railways still make discriminations between individuals, and perhaps to as great an extent as before. In fact, it is stated by numerous witnesses that discriminations were probably worse during the year 1898 than at any previous time.

"It is claimed that direct rebates and secret rates are still frequently granted ; commissions are paid for securing freight ; goods are billed at less than the actual weight ; traffic within a State not subject to the Interstate Commerce Act is carried at lower rates ; allowances and advantages are made in handling and storing, etc. Several witnesses refer to the practice of shipping goods under a false classification. Sometimes this is done without the knowledge of the railways, but in other cases they apparently connive. Thus fine hardware may be shipped as some low-class kind of iron.

"The representatives of the railways declare that so long as competition exists the attempt to get traffic by secret

⁶ Ind. Com. iv, pp. 6, 349, 359.

rates must continue. It is thought generally that there has been a considerable improvement in the situation during the year 1899. . . . In the latter part of 1898, Messrs. Cowen and Murray, receivers of the Baltimore and Ohio Railroad, addressed a letter to the Interstate Commerce Commission declaring that the practice of granting rates below the published tariffs was so general as seriously to reduce the revenue of the railroads. More than 50 percent of the traffic, at least on certain roads, was affected. The receivers expressed a determination to coöperate in the enforcement of the law. Later, conferences were held between the Interstate Commerce Commission and railway officers, which led to a general attempt to reduce the extent of the evil. Many witnesses, however, including representatives of the railroads, think that the improvement is only temporary, and that when the present rush of traffic has ceased discriminating rates will be granted more and more."

The investigations of the last five years show that these witnesses were right in thinking the cessation of hostilities to be only a temporary truce.

CHAPTER XVII.

THE ELKINS ACT AND ITS EFFECTS.

THE "Elkins Act," approved Feb. 19, 1903, amended the Interstate Act in some important particulars. It provides that any failure to publish rates and charges, or any departure from the published tariffs, or any offer or grant of any discrimination, rebate, concession, or device of any kind whereby transportation is obtained at a less rate than the tariffs published and filed with the Commission, shall be a misdemeanor of the corporation as well as of the officers or agents concerned. Every shipper also who solicits or accepts any such rebate, concession, or discrimination is guilty of a misdemeanor. In each case, whether the suit is against the railway company, or its officials, or a shipper, the punishment is a fine of \$1,000 to \$20,000 for each offence, the imprisonment clause of the Interstate Act being repealed.

Under these provisions the railroad companies themselves may be attacked, in addition to the suits against the guilty officials provided for by the Interstate Act, and shippers may be convicted by showing that by any device they have obtained a lower rate than the published rate, without proving that some one else paid more than the defendant, as was formerly necessary.

The act also expressly authorizes the United States Circuit courts to restrain by injunction or other appropriate process any departure from published rates, or any discrimination forbidden by law, without prejudice to the

bringing of suits for damages or other action under the Commerce Act. And it further declares that "in proceedings under this act and the acts to regulate commerce, the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation from producing its books and papers, but *no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding.*"

This is considered one of the best railroad measures so far enacted. It is said by many that direct rebates have practically ceased since its passage, and some declare that it has stopped all sorts of discriminations.

While Mr. Bacon, an important witness from Milwaukee, was speaking to the Senate Committee, 1905, of which Senator Elkins was chairman, the following conversation took place regarding the Elkins Act.¹

"SENATOR ELKINS. The Pennsylvania Railroad has not given a rebate since the act was passed, and they do not want to. It has been a benefit to the railroads, don't you think so?"

"MR. BACON. It has benefited the railroads, by millions of dollars.

"SENATOR ELKINS. I mean the good railroads.

"MR. BACON. It will undoubtedly effect a saving of upwards of a hundred million dollars a year."

¹ Testimony, p. 25.

Mr. Prouty of the Interstate Commission said to the Boston Economic Club in March, 1905: "The Elkins Bill is one of the most beneficent measures touching railway regulation of recent times. I have no words of commendation too strong for that measure; but this bill, which has very largely stopped the payment of rebates, as such, was a railroad measure, conceived by the railroads, passed by the railroads, and in the interest of the railroads, and no one thing in recent times has put into the treasuries of railways of this country more money than that same enactment."

Senator Elkins who drew the bill is the political "boss" of West Virginia. He is director of a railroad that belongs to the Pennsylvania system and is otherwise identified with railroad interests. He acted in harmony with leading railroads in drawing the bill. In fact, it is said on high authority that it was framed in the office of A. J. Cassatt, President of the Pennsylvania Railroad. The law is in many respects a good one, although there is a clause in it which may protect the railroads from the consequences of wrongdoing, and it is thought by many that the real effect of the law has not yet become apparent. Railroad managers do undoubtedly desire to protect themselves from the importunities of shippers to whom they do not wish to give concessions, and to be free from the danger of imprisonment, and so far as possible from any danger, in case they are caught giving preferences to persons or companies in whose property they or their railroads have a special interest. The Elkins Act accomplished all these purposes. It is claimed that the words italicized in the above quotation from the act will prevent the prosecution of any officer or road on account of any cause in respect to which they give evidence or produce books. In other words, they can only be prosecuted where the discrimination or departure from schedule rates can be proved without their help. Commissioner Prouty says: "I have no

doubt that rebates to a greater or less extent are paid in many parts of this country. And if it turns out, as the railroads contend, that the disclosure by any officer of a railroad gives the company its exemption under the Elkins Bill your law is good for nothing. They can resume the payment of rebates whenever they desire.”²

The fact is, apparently, that for some months after the act was passed the railroads in large measure discontinued rebates and some other notorious forms of discrimination, just as they did for some months after the Interstate Act was passed in 1887. The abuses “grew up again afterwards, and almost every 1st of January, from that time down to this, these railroad gentlemen get together and make a gentlemen’s agreement that they will quit and reform and turn a new leaf and not do it any more. They break down again and make a resolution again. They are now under a good resolution.”³

Some of the sweeping declarations of railway men and others about discriminations, and especially about rebates, are as follows:⁴

“All stopped.” “Eliminated.” “Almost annihilated since Elkins Law” (February, 1903). “Almost entirely wiped out.” “Have known of no such payments for over 12 years.” “Do not know of any in last three years.”

² Sen. Com. 1905, p. 2912.

³ Judge Clements of the Interstate Commission, Senate Committee, 1905, p. 3238. When the reader examines the facts that follow in this book he may wonder what the railroads will do when they are not under a good resolution, in view of the record they have made while under a good resolution.

⁴ See “Rebates” and “Discriminations” in index to Hearings of the Elkins Committee, 1905.

Some of these witnesses who do not know of any discriminations or unreasonable rates declare in other parts of their testimony that if the proposed legislation were enacted the Interstate Commission would be deluged with complaints. And this is probably true, since complaints of excessive rates and discriminations have been more numerous in the last two or three years than in any other equal period before. (Testimony of Judge Clements of the I. C. C., Senate Committee, 1905, p. 3242.)

"Have not had any for about 20 years." "Never had any." "Know of none." "Have been practically abandoned." "Past issue." "Have no knowledge of." "No complaints of." "None so far as I know."

Some of the witnesses give the railways a clean bill of character and even put a coat of whitewash over the record of the Standard Oil from 1887 on. Mr. Hiland, head of the traffic department of the Chicago, Milwaukee and St. Paul, says: "Unjust discriminations and rebates have ceased."⁵

Mr. Bird, Vice-President of the Gould lines, says: "I believe there are no rebates paid."

"CHAIRMAN. And discriminations?"

"MR. BIRD. No secret discriminations. There may be discriminations that are open and published in the tariffs. . . . I do not believe that the Standard Oil Company has received a rebate since 1887 . . . I do not believe that the beef trusts are getting rebates."⁶

Mr. Brown, counsel for the Santa Fe, said: "My sole purpose in appearing here is to put on record a sweeping denial that the A. T. and S. F. Company has made any discriminatory rates or paid any rebates."⁷

Mr. Biddle, traffic manager of the Santa Fe, was not quite so sweeping. He said: "It is true that rebates have been paid, although personally I have not known of any such payments for over twelve years."⁸

A more impressive mass of negative evidence could hardly have been secured, even if the Commission had selected the witnesses with a view to their ignorance of rebates and kindred manœuvres. It is peculiarly fortunate, just at this time, to have the statements of so many who seem to have refrained from associating with rebates or

⁵ Sen. Com. 1905, p. 1331.

⁶ *Ibid.*, pp. 2253, 2284.

⁷ *Ibid.*, p. 3140.

⁸ *Ibid.*, p. 1652.

seeing any discriminations, in view of the vigorous anti-rebate remarks of President Roosevelt in his recent messages to Congress, asking for further legislation to check railroad abuses. The President is under the impression that rebates and other evils still exist, but if the Senate Committee can report to Congress that this is a mistake it will be clear that the said new legislation is not needed.

Unfortunately, however, the weight of evidence is against those who affirm the conversion of the railroads to the ways of virtue. The cessation of discriminations is denied by a large number of authorities including railroad men of the highest position.⁹

James J. Hill, President of the Great Northern, says discriminations still exist and must exist. He thinks discriminations will never cease, and declares that railroads "have to discriminate."¹⁰

Victor Morawetz, Chairman of the Executive Committee of the Santa Fe and its chief counsel, says that discrimination still exists and is "bound to exist" under present conditions. Many things the traffic managers do are not authorized by their superiors and would not be approved

⁹ On the question whether or no rebates and discriminations exist, the testimony of credible witnesses who say they know of these secret favors far outweighs the proving power of the negative statements of witnesses who say they do not know of the said phenomena. Lots of people did not know till recently that the Equitable paid a famous railroad senator \$20,000 a year for "advice." And the statements of a multitude that they did not know of it would weigh nothing against the testimony of 2 or 3 well informed men who positively stated the facts. Discriminations may go on without the railroad directors or principal officers knowing about them. They may not know about them on purpose. Where ignorance is protection 't is folly to be wise.

Railway men have told me that in many cases leading officers of a railroad are purposely kept, or keep themselves, in perfect ignorance of all discriminations and other wrongdoing in order that such officers may appear in legislative and interstate commerce hearings without knowledge of any facts that would be prejudicial to the railroad.

¹⁰ Sen. Com. 1905, p. 1474.

by them, but it is understood that concessions are given and must be given.¹¹

President Stickney of the Chicago and Great Western says that prior to the injunctions against paying rebates "it was understood among business men that schedules were made for the small shippers and those unsophisticated enough to pay the established rates," and since the injunctions the knowledge of the traffic directors has been exerted in "the problem of how to pay rebates without paying rebates." They use "elevator fees" and "midnight schedules" or sudden changes of tariff known beforehand to favored shippers. These special tariffs "are of frequent occurrence and result in greater injustice than secret rebates."¹²

Mr. Rich, the general solicitor for the B. & M., said to the Providence Economic Club, in the spring of 1905, that 75 percent of products is carried below the published rates. He added that the rates are mostly open. The published rates no doubt are open, but it is hard to believe that the cut rates are mostly open. If they were, there would be no reason for publishing rates other than those in use. Every rate below the published tariff is a violation of law. And it is not easy to see why the railroads should risk multitudinous violations of law simply to establish open rates which might be published without interfering with any purpose that is honest. I quoted Mr. Rich's words to an excellent authority and he said, "Cut rates are not open rates. Can't make people believe that."

Senator Dolliver said:¹³ "A famous railway president, speaking in this city a month ago, stated that the whole railway practice of America was honeycombed with secret rebates and discriminations as late as last January."

Professor Ripley says¹⁴ that discriminations between

¹¹ Sen. Com. 1905, pp. 819, 820, 842.

¹³ *Ibid.*, p. 951.

¹² *Ibid.*, pp. 2122, 2123.

¹⁴ *Ibid.*, p. 2329.

localities and between commodities through classification, etc., are still serious evils.

Governor Cummins of Iowa said: ¹⁵ "So long as there is competition among the railroads in securing business, so long they will find some way of getting that business through favors."

Mr. C. W. Robinson, representing the New Orleans Board of Trade, said: "The direct rebate has been stopped by the Elkins law, but there still remains the indirect rebate, or the almost innumerable forms of discrimination, which are difficult to reach by legislation, and in the practice of which some of the traffic managers are unquestionably experts."¹⁶

The complaints made to the Interstate Commission in the last few years ¹⁷ and the facts brought out in the

¹⁵ Sen. Com. 1905, p. 2083.

¹⁶ In illustration of his statement the witness referred to the prevalence of abuses in respect to terminal railroads, private cars, purchasing agents, switching charges, special tariffs, milling in transit, etc., describing a number of cases that have come under his personal observation in the year 1905. Sen. Com. 1905, pp. 2432, 2434.

¹⁷ More complaints per annum have been filed with the Commission since the Elkins Act took effect than were filed before the act was passed. The reports of the I. C. C. show 145 formal complaints filed in 1903 and 1904, carrying the total to 789, and 888 informal complaints, carrying the total to 3223, making the whole number 1033 in the two years, and 4012 since 1887 — more than 25 percent of the complaints having been filed in the last two years which constitute only 11 percent of the time covered by the reports of the Commission. Out of the 62 suits entered in 1904, 50 charge unjust discrimination of serious character, and nearly all the rest involve discrimination in some form. The complaints entered for amicable adjustment also relate in large part to cases of discrimination between persons and places, refusal to furnish cars, unreasonable delay, unfair classification, discrimination in track facilities, unfair estimate of weights, allowing competitors to underbill, refusal of the Transcontinental Passenger Association to grant the American Federation of Labor the usual special convention rate for their meeting at San Francisco, refusal to route shipments as ordered by shippers, relatively excessive rates on vegetables, lumber, lead, drugs, corn products, coal, iron, shoes, leather, etc., violations of the long and short haul clause, and outright refusal to accept shipments, besides a number of complaints of overcharges, and rates alleged to be unreasonable per se.

Adding the figures for 1905, which have come to hand since the above was

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investigations of the Interstate Commission from March, 1903, to the present time, and in the Hearings of the Senate Committee, 1905, abundantly confirm the opinions of these witnesses.

The Elkins Bill became law in February, 1903. In December of the same year the Interstate Commerce Commission reported that they believed the payment of rebates was largely discontinued, but that pressure upon the companies to maintain published rates had "begotten a new crop of expedients for the purpose of favoring particular shippers."¹⁸ Private-car abuses and terminal-railway abuses especially have "grown up much more intensely and to an aggravated degree since the Elkins Act than ever before."¹⁹ In 1902, in consequence of the exposure of wholesale rebates in the dressed-meat traffic, etc., temporary injunctions were issued against 14 leading railroads of the West, and while the matter was still before the court the Elkins Bill was passed, settling the injunction question in

written, we find that more than double the number of complaints of discrimination have been made to the Interstate Commerce Commission in the last three years, since the Elkins Law was passed, than in any equal period before. The complaints filed in 1903, 1904, and 1905 constitute more than a third of the whole number of complaints from the beginning of the Commission in 1887. The average number of complaints per year from 1887 to 1902 inclusive was 186, while the yearly average for 1903-1905 is 534 — more than double, nearly threefold — and five-sixths of the suits entered charge facts that constitute discrimination of serious character, and nearly all the rest involve discrimination in some form.

¹⁸ In the report for 1905, p. 13, the Commission refers to the fact that in the reports for 1903 and 1904 some favorable comments were made on the effect of the Elkins Law upon the practice of paying rebates, and says: "Further experience, however, compels us to modify in some degree the hopeful expectations then entertained. Not only have various devices for evading the law been brought into use, but the actual payment of rebates as such has been here and there resumed. [It never stopped in a good many places, judging by the La Follette facts and other evidence, including the statements of many leading railroad men.] Instances of this kind have been established by convincing proof. More frequently the unjust preference is brought about by methods which may escape the penalties of the law, but which plainly operate to defeat its purpose."

¹⁹ Judge Clements of the Commission, Sen. Com. 1905, p. 3238.

favor of the Commission. The railroads, convinced that rebates were dangerous, for the time at least, turned their attention to methods of discrimination not so subject to injunction or other judicial disorder. To these they have given their main allegiance, though they have by no means abandoned the rebate.

CHAPTER XVIII.

THE WISCONSIN REVELATIONS.

IN 1903, as stated in a previous chapter, Governor La Follette began an investigation of the railroads in Wisconsin, in relation to illegal deductions from the gross earnings returned by them as a basis for taxation. The investigation covered the period from 1897 to 1903, and it was found that \$10,500,000 of illegal tax deductions had been made in that time, about \$7,000,000 of which was in the form of unlawful rebates and discriminations. Every railroad of any importance in the State had paid rebates every year in large amounts both on passenger traffic and freight business. Here is a table of the rebates paid in violation of the Interstate Commerce Act and the Elkins Law by the leading railways in Wisconsin, so far as brought to light by the investigation: ¹

ILLEGAL REBATES PAID TO SHIPPERS IN WISCONSIN, 1897-1903.

	FREIGHT.	PASSENGER.
Chicago, Milwaukee & St. Paul	\$1,346,237.	\$170,968.
Chicago & Northwestern	3,023,810.	614,861.
Chicago, St. Paul, Minneapolis & Omaha . .	515,323.	64,559.
Wisconsin Central	244,492.	82,475.
"Soo Line"	464,041.	39,807.
Burlington	366,105.	
Other Railroads	158,677.	489.
	<u>\$6,118,689.</u>	<u>\$972,661.</u>

¹ See the admirable summary of the investigation by Ray Stannard Baker in *McClure's Magazine* for December, 1905.

These figures represent only part of the rebates really paid, and do not touch in any way the vast amount of favoritism which does not take the rebate form nor appear in any cash item.

Part of the Wisconsin rebates were paid on State business, but far the larger part was on interstate traffic. The Elkins Law, instead of putting an end to the payment of rebates, as so many railroad men have declared, had no effect whatever, apparently, on the volume of rebates paid. Here is the monthly record of rebates paid in 1903 by one of the principal railroads operating in Wisconsin :

January, 1903	\$37,000
February	57,000
March	47,000
April	36,000
May	25,000
June	13,000
July	101,000
August	32,000
September	46,000
October	9,000
November	666
December	2,032

The Elkins Act went into effect February 19, 1903; yet the rebates in February and March were larger than in January; and the rebates for July were nearly three times the January figure. It is clear, however, that when the light of publicity was turned on by the investigation, which began September 29, 1903, the rebate payments that could be checked up on the books dropped from \$46,000 in September to \$9,000 in October, \$666 in November, and \$2,032 in December. Instead of paying cash rebates the railroads began to issue a great many "midnight tariffs," that is, rate schedules printed on purpose to give favored shippers advantages over others and then revoked or superseded as soon as the purpose has been accomplished, so that the

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midnight tariff has, in a different way, done exactly what is done by the payment of the cash rebate.

The impotency of the Elkins Law is still further shown by the fact that the total rebates paid by the railroads in 1903 were greater than the rebates of 1902. The Northwestern road, for example, jumped from \$212,075 rebates in 1902, before the Elkins Law, to \$410,476 in 1903, mostly after the Elkins Act took effect.

For a fuller understanding of the falsity of the assertion that rebates and discrimination have ceased, the reader may consult the recent reports of the railroad commissions in Kansas, Iowa, Minnesota, and other State and National investigations, adding many other facts to those brought out in Wisconsin.

An investigation in Minnesota a little before that of Wisconsin showed precisely the same sort of facts, namely, enormous amounts in rebates were paid by the Great Northern, the Northern Pacific, and other Minnesota railroads. But in the Minnesota cases, to forestall further agitation and publicity, most of the railroads paid the additional taxes demanded by the State.

Even in this year of grace, 1906, reports continue to come in relating to investigations in which serious discriminations in violation of the Elkins Law are said to have been unearthed. The press has been full of accounts of Commissioner Garfield's investigation into discriminations by leading railroads in favor of Standard Oil; the Interstate Commerce Commission's investigation concerning gifts of coal stock, favors in distribution of cars, sidings, etc., in Pennsylvania; reported conviction of a number of defendants in the U. S. District Court at Kansas City for violating the Elkins Law; suits by Attorney General Moody against several Eastern roads for rebating and discrimination in favor of the Sugar Trust, the trial of the suit against one big Eastern road being reported as resulting in a fine of more than \$100,000; etc., etc.

The railroads do not by any means confine their rebate operations to the States in which their lines are located. The case of the Camden Iron Works, recently before the Interstate Commerce Commission, shows that a railroad will reach half across the continent with a rebate in its hand to grasp important shipments. In this case the Northern Pacific gave R. D. Wood & Co. of Philadelphia, the owners of the Iron Works, a rebate of 5 cents a hundred on 1,500 tons of iron pipe. The Great Northern, the Canadian Pacific, the Delaware & Hudson, and other roads had agents on the spot trying to get the business away from the Pennsylvania, which would naturally have taken the shipment, but the 5 cent rebate carried the day and the iron went via the B. & O., the Great Lakes, and the Northern Pacific. The rebate was paid by a check for \$1,500, and no one but the traffic managers knew of the transaction, which would probably never have come out except for the complaint of a traffic agent on the Pennsylvania, who had offered a rebate of 1 cent a hundred but did not get the business and was therefore blamed by his superiors.

CHAPTER XIX.

THE COLORADO FUEL REBATES AND OTHER CASES.

IN the Colorado Fuel and Iron Case, investigated by the Commission in 1904 and 1905, it was shown that the Santa Fe has persistently violated the Interstate Act, the Elkins Act, and the injunctions issued by the United States Circuit Court. The Santa Fe tariff filed with the Interstate Commission May 24, 1903, and in effect till November 27, 1904, made the rate on coal from the Trinidad district, Colorado, to Deming, N. M., \$4.05 a ton; but Mr. Biddle, General Traffic Manager of the Santa Fe, testified that during all this time \$1.15 of the \$4.05 was always paid back by the railroad to the Colorado Fuel and Iron Company, a concern in which the Standard Oil people are largely interested. Similar favors were shown the Colorado Company in respect to shipments from its mines at Gallup, N. M., giving that company a decided advantage over competitors, who were obliged to pay the full rate.¹

It made a difference, also, who was to get the coal. The Santa Fe carried Colorado Fuel and Iron Company coal to the El Paso and Southwestern for \$2.90 a ton, while charg-

¹ The Interstate Commission says: "While giving rebates to the fuel and iron company from tariff rates, it (the Santa Fe Railroad) charged the full tariff rates on interstate shipments of coal by other shippers in not only the general coal region involved, but in the same coal field. This practice of the railway company resulted in closing markets for coal to shippers competing with the Colorado Fuel and Iron Company." 10 I. C. C. Decis. 473, February, 1905.

ing \$3.45 a ton for hauling the same coal from the same mine to the same point, Deming, when the billing was to the Southern Pacific. The El Paso could get coal on a rate of \$2.90, while the Southern Pacific must pay \$3.45 and the published tariff rate was \$4.05. Anybody on the line of the El Paso who stood in with the management could get the \$2.90 rate, while his competitors might be paying \$4.05.

Mr. Biddle testified as follows, December, 1904, in answer to the questions of Mr. Field: "I say the freight rate we got from the Southern Pacific was \$3.45 at the time we were accepting \$2.90 on coal destined to the El Paso and Southwestern."

"MR. FIELD. That is to say, at that time you were charging the Southern Pacific Railroad Company \$3.45 per ton for transporting coal (to Deming), when you were charging the El Paso and Southwestern Railroad Company only \$2.90?

"MR. BIDDLE. Yes, sir.

"MR. FIELD. And all upon a published tariff which showed a rate of \$4 to Deming?

"MR. BIDDLE. No; the arrangement we had with the Southern Pacific was an agreement as to what they would pay for their coal.

"MR. FIELD. You paid no attention whatever to the published tariffs?

"MR. BIDDLE. I don't know that we published a tariff on Southern Pacific coal at all.

"MR. FIELD. When you published a tariff for the information of the public and the Interstate Commerce Commission, it was with the reservation that you might modify that tariff to certain consumers as suited your business?

"MR. BIDDLE. It did n't apply to coal when destined to the Southern Pacific.

"MR. FIELD. That is another way of saying that it did n't apply when you did n't want it to apply.

"MR. BIDDLE. It means just exactly what I said it meant. I said that the rate we published to Deming on coal was published with the full knowledge that it did not apply on coal destined to the Southern Pacific, or coal going to points on the El Paso and Southwestern.

"MR. FIELD. With whose full knowledge?

"MR. BIDDLE. With my full knowledge."

That is to say: The law requires all rates to be published and adhered to, so that the Commission and the public may know what rates are being charged. The traffic manager publishes a rate on coal, knowing that he intends to give a secret cut rate to special customers, and then testifies that the secret rate is no breach of the published tariff or violation of law because the tariff was published with his full knowledge that he was n't going to stick to it. The law in such case depends entirely on what the railroad manager whispers to himself when he issues the tariff. If the manager says to himself, "I intend to follow this tariff which I'm sending to the Interstate Commerce Commission," then a rate lower than the tariff is in violation of the law; but if the manager says, "I intend to give the Southern Pacific and the El Paso lower rates than this tariff shows," then the tariff is issued with full knowledge that it does n't apply to Southern Pacific and El Paso, and cut rates to Southern Pacific and El Paso and their customers constitute no violation of law.

The Caledonian Company was organized in 1888 to operate a coal mine at Gallup, N. M., on the Santa Fe.

The company sold large quantities of engine coal to the Santa Fe. The contract expired in 1898 or 1899, and was not renewed, the parties not being able to agree on the price; but the Santa Fe continued to buy more or less coal from the Caledonian till 1901. Some time previous to the expiration of the contract, the other mines at Gallup came under the control of the Colorado Fuel Company. An agent of the Colorado Company asked the Caledonian manager to

name a price on his property, but he declined to do so. "Soon after the Colorado Company took possession of these mines, the Santa Fe system stopped receiving engine coal from the Caledonian Company." The Caledonian had a contract for engine coal with another road, the majority of whose stock was owned by the Santa Fe. This contract was also terminated in 1903, the manager of the road stating that he did it, not because of any dissatisfaction, but by direction of the purchasing agent for the Atchison.²

The Caledonian sought other markets, but found itself handicapped by discriminating freight rates. Coal from the Colorado Fuel Company's mines at Trinidad and at Gallup was being supplied at a price which just about equalled the freight rate alone from the point of production to destination. For example, the rate on lump coal from Gallup to Las Cruces was \$5.65, and the coal was selling at the mine for \$1.60 to \$2.50 per ton; yet Gallup lump coal from the Colorado Fuel Company's mines was being sold in Las Cruces for \$5.65 a ton, exactly what the rival company, the Caledonian, would have to pay in freight. The Caledonian shipped coal to Silver City, N. M., paying the published rate, \$5.90 a ton, while the Colorado Company was able to deliver Gallup coal at Silver City at \$5.75 total for freight and cost of coal. This was in April, 1900. Later, the Caledonian shipped to Silver City at a rate of \$5.75 per ton, just what the Colorado sold for, freight and all. As Gallup, Silver City, and Las Cruces are all in New Mexico, the Interstate Act does not apply to traffic between those points; but "Mr. Bowie (manager of the Caledonian) testified that he had made many shipments from Gallup to El Paso, Tex., upon which he paid the published rate, and that he found the same competitive conditions at El Paso and at points in Arizona and Mexico which existed at Silver City."³

² 10 I. C. C. Decis. 475.

³ 10 I. C. C. Decis. 476-480. While the Caledonian Company was trying to get to market on equal terms with the Colorado Fuel and Iron Company,

The result was that the Caledonian and other mines were practically driven from the market, their business brought to a standstill, and the Colorado Fuel Company obtained a virtual monopoly of the trade that should have been divided with these companies.

Before the Senate Committee, 1905, in answer to a question by Senator Kean about the so-called discriminations in the matter of the Colorado Fuel and Iron Company and the Santa Fe Railroad, Mr. Hearne of the Colorado Fuel Company said: "This matter has been brought about largely by sensational newspapers. . . . The coal produced by the Gallup people is inferior,⁴ carrying not more than half the heating power of our high-grade bituminous. If the railroads have not extended to them the same rate they have extended to us, I presume it is because the people at Deming and El Paso, etc., do not want that fuel at any price."⁵ In other words, the Gallup coal was so poor that the people at Deming did not want it anyway, and so the railroad put a prohibitive rate on it to keep the people at Deming from buying it instead of the far superior Colorado coal which the people were determined to buy anyway.

The Santa Fe used to own and operate coal mines, but in 1896 leased them to the Colorado Fuel and Iron Company under a contract⁶ supposed to cover the question of freight rates. Afterward a circular in reference to coal rates was

they got a letter from the Santa Fe traffic office, Nov. 15, 1900, saying that they could sell their coal to the Colorado Fuel and Iron Company, or keep it. Mr. Biddle, however, when shown the letter and questioned about it, admitted the authorship, but said he did not construe the letter as saying anything of the kind. (I. C. C. Santa Fe Hearing, Dec. 1904, p. 154. The text of the letter is not given.)

⁴ There was a dispute about the relative steam power of the coals from the different localities, but the point does not seem to be material.

⁵ Sen. Com. 1905, pp. 3072, 3073. The Caledonian had a good market before the agreements between the Santa Fe and the Colorado Coal Company were made, and it had many orders afterwards, but could not fill them except at a loss because of favoritism in freight rates.

⁶ I. C. C. Hearing, Dec. 1904, pp. 135, 148, Biddle.

issued from the central office of the Santa Fe in Topeka.⁷ It stated that coal originating at certain points (where the Colorado Fuel and Iron Company had mines) would be delivered when consigned to certain specified industries or parties at prices covering both freight and cost of the coal, which total prices might be, as we have seen, no greater than the published freight rate alone. The circular was headed: "This publication is for the information of employees only, and copies must not be given to the public."⁸ And it gave notice to Santa Fe agents that the Colorado Company's coal shipped to points on the Santa Fe was "to be billed at figures furnished by the Colorado Fuel and Iron Company which will include the freight rate and the price of coal."⁹

The following questions of the I. C. C. counsel, Mr. Field, and answers by Mr. Biddle, the general traffic manager of the Santa Fe, are of interest in this connection:

"MR. FIELD. You did not advise the Commission that the rate you made (on the Colorado Company's coal) included the price of the commodity?"

"MR. BIDDLE. No.

"MR. FIELD. Why did n't you?"

"MR. BIDDLE. I did n't consider it necessary.

"MR. FIELD. I ask you categorically if you did n't do it with the intention of deceiving the Interstate Commerce Commission and the competitors of the Colorado Fuel and Iron Company as to that rate.

"MR. BIDDLE. No, sir.

⁷ Mr. Biddle says the coal rate circular was issued by his authority and continued a practice that was in effect when the Santa Fe operated the mines, but he could not say whether it was "simply continued at the time the Colorado Company acquired the mines or whether there were negotiations under which it was done" (I. C. C. Hearing, Dec. 1904, pp. 135, 136, 147, 148).

⁸ A copy of this circular bearing the name of the traffic manager of the Santa Fe was taken without permission by a dealer at El Paso from the Santa Fe office there.

⁹ I. C. C. Santa Fe Hearing, Dec. 1904, p. 8.

"MR. FIELD. What was your purpose, Mr. Biddle?

"MR. BIDDLE. Well, we did it for business reasons.

"MR. FIELD. What were the business reasons? I want you to tell me the reasons.

"MR. BIDDLE. We did it for reasons we did not consider necessary to tell; on coal to intermediate points — the rate that we found it necessary to make to points reached by the El Paso and Southwestern.

"MR. FIELD. You say upon your oath now, that you did not do it for the purpose of deceiving the Interstate Commerce Commission or the competitors of the Colorado Fuel and Iron Company?

"MR. BIDDLE. Whatever answer I may make here I am making under oath.

"MR. FIELD. Do you say that is so?

"MR. BIDDLE. I repeat what I said.

"MR. FIELD. You did not intend to conceal from the Interstate Commerce Commission the fact that that rate as published included the price of the commodity?

"MR. BIDDLE. We did it for business reasons.

"MR. FIELD. I ask you for a categorical answer. Did you or did you not intend to conceal from the Interstate Commerce Commission the fact that that rate included the price of the commodity?

"MR. BIDDLE. I decline to answer."

In another part of the hearing, Mr. Field said to Mr. Biddle: "Can you say, Mr. Biddle, how it happened that you issued a circular to your subordinates in which you said, with reference to these coal rates, 'To be billed at figures furnished by the Colorado Fuel and Iron Company, which include the freight rates and the price of coal; the rates issued in the regular tariffs to be the minimum'?"

"MR. BIDDLE. Yes, sir.

"MR. FIELD. Will you tell us?

"MR. BIDDLE. It is because the railroads — the Western railroads particularly — I don't know whether the Eastern

roads do it or not — have been engaged in the reprehensible occupation of serving as a collecting agency for the coal companies, and those particular instructions were given so that the Colorado Fuel and Iron Company could sell coal to John Smith at a given place and charge him \$1.25 and somebody else \$1.50 for that same coal.”¹⁰

When the document was presented in evidence before the Interstate Commerce Commission, counsel for the railway objected to its introduction on the ground that it had been stolen.

Morawetz says that the rate agreement in respect “to shipments to the El Paso and Southwestern was a three-cornered arrangement made in New York in 1901 between the Colorado Fuel Company, the Santa Fe, and Phelps, Dodge & Co., who operated large copper mines and controlled the El Paso and Southwestern Railway.”¹¹

Paul Morton, who was then the head of the Santa Fe traffic department, says that in 1901 the people interested in smelting and mining in Southern Arizona and Northern Mexico threatened to use Eastern coke or build a coal railroad of their own unless lower prices were made on the coal and coke they were receiving at El Paso and Deming. They were large consumers, and their threat menaced a traffic worth nearly a million dollars a year to the Atchison system. To protect its interests the Santa Fe entered into an agreement with the Fuel Company and the El Paso and Southwestern people the terms of which were that the Fuel Company was to supply coal at \$1.15 a ton, and the Santa Fe was to haul the coal to El Paso and Deming “at the very low rate of \$2.90 per ton, which was in reality a division of rate, not usually published.” And “the Southwestern people were to pay \$4.05 for the coal which was

¹⁰ I. C. C. Santa Fe Hearing, Dec. 1904, pp. 146-148.

¹¹ Sen. Com., 1905, p. 848.

to be used by the railroad itself and the industries along its line." ¹²

This arrangement was, in view of the rates charged shippers from other points and other consignees at El Paso and Deming, a clear violation of the common law and the Interstate Commerce Act. A Federal injunction was served on the Santa Fe in March, 1902, forbidding departure from the published rates, and the Elkins Bill was passed in February, 1903. The El Paso arrangement was not at the start a defiance of injunction or the law of 1903, but became such by its continuance after their issue. General Traffic Manager Biddle and General Freight Agent Gorman sent out general orders in March, 1902, and February, 1903, that the law was to be obeyed, and that "no departure therefrom will be permitted so far as this company is concerned," but the law was not obeyed nevertheless. A general order of a railroad manager counter to the financial interests involved does not seem to count any more than a Federal injunction.

The El Paso agreement was by no means the only breach of law in the case. Even the discriminations in respect to shipments between New Mexico points were in direct violation of settled principles of the common law.

The Commission found that the Santa Fe acted as agent for the Colorado Fuel Company in collecting from its customers the price of the coal itself along with the freight rate; ¹³ that for over five years (July, 1899, to Nov. 27, 1904)

¹² Mr. Morton's letter to President Roosevelt, June 5, 1905. Secretary Morton continues: "The tariff covering this arrangement was published so as to show the freight rate to be \$4.05 per ton instead of the delivered price at El Paso and Deming, and did not separate the freight rate from the cost of the coal at the mines, as it should have done. Until the investigation of the case by the Interstate Commerce Commission I did not know personally how the matter was being handled, so far as the publication of the tariff was concerned. My own connection with the case was to see that the traffic was secured to the Atchison rails, and after that details were left to subordinates."

¹³ Mr. Biddle testified that the same thing had been done for other coal companies, and in one instance at least it was shown that it had been done for

the railroad had paid the Colorado Fuel Company a rebate of \$1.10 to \$1.25 per ton on shipments to Deming; that the railroad and the Coal Company have "systematically and continuously" violated the Interstate Commerce Act of 1887 and also the Elkins Act of 1903; and that from March 25, 1902, till Nov. 27, 1904 the railway had been in "continuous disregard" of the order of the United States Circuit Court (in a suit begun at the instance of the Interstate Commission) enjoining the railway to observe its published schedules of rates.¹⁴

Commissioner Prouty says: "In all my experiences with railway operations I never saw such barefaced disregard of the law as the Santa Fe railroad and the Colorado Fuel and Iron Company have manifested in this coal case. For years the railroad company has received less than its published rates from the Colorado Fuel and Iron Company while its competitors have paid higher rates."

The counsel, Judson and Harmon, employed by the Government to examine into the "alleged unlawful practices of the Santa Fe in the transportation of coal and mine supplies" reported to the Attorney General, February 28, 1905, as follows: "From August, 1902, until December,

the Victor Fuel Company, but in this case" "the price of the coal and the rate of freight were kept entirely separate, the price of coal being treated in the nature of an advance charge." The Commission says further "If the Colorado Fuel and Iron Company had in all cases paid the published tariff rate which was exacted from other shippers, the fact that the price of the coal and the freight were included in a single item would have worked no practical advantage to that company so far as we can see. Neither, apparently, would there have been any reason for this arrangement if the purpose of the parties had been honest. If, however, there existed upon the part of the Santa Fe Company an intent to charge the Colorado Fuel and Iron Company less for the transportation of its coal than the published rate, it is evident that this method of billing would afford a ready means for concealing the transaction. In point of fact, during the entire period covered by this investigation (July 1899 to Nov. 27, 1904) the Santa Fe Company did transport coal for the Colorado Fuel and Iron Company for less than its open tariff rates, and these concessions amounted in many cases to the price of the coal itself." (10 I. C. C. Decis. 482, Feb. 1905.)

¹⁴ See 10 I. C. C. Decis. 473, 487, 488, Feb. 1, 1905.

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1904, the railway company continuously transported coal for the Colorado Fuel and Iron Company at less than the published rates then in force, from various points in Colorado and elsewhere to El Paso, Tex., Deming, N. M., and other places, to which such transportation was interstate commerce.

“This was done by secret arrangement between the two companies, under which the coal was apparently billed at the published rate of freight, although in fact the price of the coal was included. The railroad company collected the amount shown by the billing, and paid over part of it to the fuel company as the price of the coal, making the real charge for transportation less than the published rate by just that amount. At the same time the rates given and charged other shippers were the published tariff rates without any deduction.

“This plan, and the way it was carried out, plainly indicate an intention to deceive the Government and the public, and to enable the fuel company to gain a monopoly of the coal supply at the points involved by giving them a strong advantage over competitors in the actual cost of transportation. The motive for thus favoring the fuel company does not appear in the evidence thus far taken, but the fact is clear.

“This secret arrangement with the fuel company involved the carriage of hundreds of cars per month. The concessions from the established rates must have amounted to about a million dollars for the two and one-half years during which they were granted; and it is incredible that this scheme was devised and carried out by any authority but that of the chief officers of the railway company, who were in control of its traffic department. And it was the duty of each and all of these officers to see that the injunction (of March, 1902) was obeyed.”

The special counsel recommended that “the Atchison Company and all its principal officers and agents who had,

during the period above named or any part thereof, power and authority over traffic agreements and freight rates, be arraigned for contempt of court."

President Roosevelt has directed that proceedings for contempt be taken against the companies in the Colorado Fuel Case and the International Harvester Case, but will not proceed against individual officers personally in any case until the department is in possession of "legal evidence of wilful and deliberate violation" of law on their part.

I went over the Santa Fe while these secret discriminations were in full blast, and met President E. P. Ripley, Vice-President Paul Morton, and other high officials, who impressed me so favorably in our talks about rates, discriminations, etc., that I wrote in my notebook: "I believe I have found one honest railroad in America, honest at least in intent, whatever deviations from principle the system may force upon it." Mr. Spearman evidently got a similar impression, for he says: "The Santa Fe has eliminated preferential rates entirely from its own traffic problems; and this sturdy determination to put all shippers on a just and equal footing, to maintain open and even rates, is the keynote of President Ripley's successful strategy."¹⁵

This is stronger than the impression I received, which was that discriminations did exist and it was not thought possible that they should cease to exist, so long as competition continues, but that there was an earnest purpose to eliminate them so far as possible. Notwithstanding the Colorado Case and others mentioned hereafter I still think that the present administration of the Santa Fe is on the whole relatively very honest and very admirable.¹⁶

¹⁵ "Strategy of Great Railroads," 1904, p. 167.

¹⁶ I confess, however, that I do not see how, in the light of the records in the Colorado Case, the Santa Fe counsel could tell the Senate Committee this year that his road had made no discriminating rates (see above, p. 114). Neither is it easy to see how Mr. Biddle could testify that he had not known of the payment of any rebates for 12 years. The Commission says the Santa Fe paid rebates to the Fuel Company till November, 1904, and other prefer-

President Roosevelt was led to a similar conclusion by the frank and manly stand taken by Paul Morton in his testimony in the Dressed-meat Hearings, Jan. 7, 1902. In a letter to Mr. Morton, June 12, 1905, the President says: "At the time when you gave this testimony the Interstate Commerce Law in the matter of rebates was practically a dead letter. Every railroad man admitted privately that he paid no heed whatever to it, and the Interstate Commerce Commission had shown itself absolutely powerless to secure this heed. When I took up the matter and endeavored to enforce obedience to the law on the part of the railroads in the question of rebates, I encountered violent opposition from the great bulk of the railroad men and a refusal by all of those to whom I spoke to testify in public to the very state of affairs which they freely admitted to me in private. You alone stated that you would do all in your power to break up this system of giving rebates." It was this, the President says, that led him to invite Mr. Morton to take a place in the Cabinet.

The high character and ability of Mr. Morton and President Ripley and the fact that the Santa Fe management seems to represent high-water mark in railroad honesty, gives great importance to the Santa Fe cases, and the attitude of her leading officers towards the law, and the principle of impartial treatment of shippers.

Paul Morton is reported to have said to a representative of the Chicago *Daily News*, December 31, 1904: "What

ences have been unearthed, as we shall see hereafter. Some shippers and some consignees have had better terms than others. Mr. Biddle does not call these preferences rebates. The Commission sees that when the Santa Fe collected the published freight rate, \$4.05, from the El Paso people and paid for the coal out of that, instead of collecting the \$4.05 as freight and leaving the El Paso folks to pay for the coal in addition, the effect was the same to the El Paso people as the payment of a rebate equal to the value of the coal, and the same to the Fuel Company in respect to securing a monopoly of the market, and so the Commission, looking at the substance of the matter and the form too so far as could be judged from the published tariff, called the payments rebates, or payments out of, or deductions from, the regular tariff rates.

Mr. Biddle did was exactly right, in my judgment, and if I had been in his place I should have done the same thing." And President Ripley is stated to have said to a reporter for the *Inter-Ocean*, "It was not rebating. It was simply a figure agreed upon by private contract. Mr. Paul Morton was cognizant of it, and though his name may not be affixed to the order, he was the man from whom Mr. Biddle, the freight traffic manager, got authority to haul coal for the Colorado Fuel and Iron Company on the terms named."

"Did you also know of it, Mr. Ripley?"

"Why, yes, as I know of all of our business. I consider it absolutely legitimate, and will do it again to-morrow if I like."

Knowing that serious misrepresentations have appeared in the papers, — for example, that Mr. Morton was a stockholder in the Colorado Fuel Company, and recreant to Atchison interests, which was untrue, as Mr. Morton had sold his stock in the Fuel Company and all its auxiliaries when he left its employ before entering the service of the Atchison in 1895 — knowing the frailty of newspaper reports I wrote to President Ripley and Paul Morton asking if it were true that they had said Mr. Biddle did right in making the arrangement with the Colorado Fuel Company in respect to the rates to Deming, etc. They replied as follows:

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM.

President's Office.

CHICAGO, August 22d. 1905.

DEAR SIR, — I did say to the Press that Mr. Biddle's action in making the rate was exactly right. The whole trouble arose from a mistake in our tariff printing department in confusing the actual rate charged with the amount to be collected at destination. It was our custom, and that of all the other fuelroads in Colorado, to collect at destination the price of the coal as well as the freight rate. Inasmuch

as the tariffs printed are a guide intended quite as much for the information of our own agents as for the public, the clerks included the price of coal in the tariff as a guide to collecting agents, but it did not occur to them that the information was liable to mislead the public, especially as it was a well-known fact that no shipper except the Colorado Fuel and Iron Company could possibly be interested. The whole transaction was a perfectly innocent one so far as regards any intent to injure any interests or to deceive the public in any way, nor was any person injured by the transaction. I think that all this will transpire and be recognized by the court in the case now pending at Kansas City, though, of course, I am not in position to anticipate a court decision. The trouble with the whole matter was the fact that Mr. Morton was a member of the Cabinet and that certain portions of the Press made use of the incident for the purpose of discrediting the Administration.

The matter was unfortunate in so far as it may have constituted a technical violation of the Interstate Commerce Law and of the Injunction, but that is the worst that can be said of it.

(Signed) E. P. RIPLEY.

THE EQUITABLE LIFE ASSURANCE SOCIETY.

President's Office.

NEW YORK, August 24, 1905.

DEAR SIR,—Referring to your query relative to the remarks alleged to have been made by me on December 31, 1904, to a reporter of the Chicago *Daily News*, I have to say that although I do not now recall everything that may have been said by me in conversations which were not intended for publication, it is quite possible that I did remark to some newspaper men that in my judgment Mr. Biddle's personal action in the case was entirely justifiable, and exactly what I or any other railroad man would have

done under similar circumstances. The contract between the Railroad Company and the Fuel Company was of itself neither unlawful nor unbusinesslike. On the other hand, it was perfectly defensible from a legal standpoint, as well as being good business ethics.

The fault lay with the Railroad Company's tariff bureau, which failed to properly publish the tariff, which should have shown that the published rate of \$4.05 per ton included the price of the coal (\$1.15 per ton). There was no discrimination in favor of the Colorado Fuel and Iron Company; in fact, discrimination was impossible, because there was no other shipper of coal in that territory.

(Signed)

PAUL MORTON.

There were, however, other mining companies in adjacent territory, along the line of the Santa Fe in New Mexico, and at Gallup there were competitors in the same field. The same day that the Commission began to investigate the Colorado Case complaint was made about the rates from San Antonio, N. M. San Antonio lies 150 miles north of El Paso on the Santa Fe line from Trinidad, which is 500 miles from El Paso. The rate paid by the Fuel Company from Trinidad was \$2.90 and the rate from San Antonio had been \$1.25. "Under this adjustment of rates a coal operator at Carthage whose product reached the iron of the Santa Fe at San Antonio had been able to compete with the Colorado fields, and had entered into a contract for furnishing the Mexican Central Railway Company with its fuel. While that contract was pending the Santa Fe advanced the freight rate from San Antonio to El Paso from \$1.25 to \$1.50. By this action the operator at San Antonio was forced to give up his contract and go out of business."¹⁷

It seems clear that even our best railroads, while unwilling to countenance graft and desiring to avoid all criminal

¹⁷ Commissioner Prouty to the Boston Economic Club, March 9, 1905.

practices, see nothing immoral in granting whatever favors or imposing whatever disadvantages may be deemed necessary to forward the financial interests of the road.

The Santa Fe is by no means the only railroad that has been kicking over the traces since the Elkins Bill was passed. Mr. Hendrickson, Secretary of the Associated Merchants of Cumberland, Maryland, told the Senate Committee that he came "to complain of coal discriminations. We are charged 15 cents more a ton to tide water for our coal than is charged other mines in more distant regions (50 to 75 miles further from market on the same road), and we have a large amount of bituminous coal that cannot be developed at the 15 cents differential."

"SENATOR DOLLIVER. Why do they make this differential against you ?

"MR. HENDRICKSON. I can only state that the Baltimore and Ohio officials, when they were petitioned, said that other districts have poorer coal than ours, a compliment we did not appreciate under these circumstances; and they object to letting our coal reach market as cheaply as these districts which they claim have poorer coal. Nevertheless, it shuts our region out entirely. It is practically a confiscation of our coal values, not our coal, but coal values, and that amounts practically to the same thing."¹⁸

The B. & O. made certain charges when coal was loaded by tipple and exacted more if it was loaded in any other way. This is an unreasonable discrimination against all who do not load by tipple.¹⁹ The Pere Marquette Railway has been selling ice to the Armour Car-Line at \$2 a ton while charging other shippers \$8 to \$12 per ton.²⁰

The absorption of switching charges in some cases and not in others constitutes an easy method of discrimination.

¹⁸ Sen. Com. 1905, p. 3607.

¹⁹ 10 I. C. C. Decis. 226, and Rep. 1904, pp. 58-59.

²⁰ Sen. Com. 1905, p. 367. Testimony of E. M. Ferguson, representing 12 organizations of shippers, State and national.

For example, at Cincinnati there is a large buyer of lumber whose yard is on what is called "Hazen's Switch." To get to this switch from the Louisville and Nashville Railroad, cars must go over part of the tracks of the P. C. C. and St. Louis Railway and the Cinn. L. & N. Railway. These roads charge the Louisville and Nashville \$6.50 to \$9 a car for switching. On lumber originating at some points the shipper has to pay these switching charges in addition to the freight; while on lumber from other points the Louisville railroad pays the switching charges and the shipper is favored to that extent.²¹

²¹ Sen. Com. 1905, p. 2432.

CHAPTER XX.

FREE CARTAGE, STATE TRAFFIC, DEMURRAGE, THE EXPENSE-BILL SYSTEM, GOODS NOT BILLED, MILLING-IN-TRANSIT.

IN a recent St. Louis case it appears that the railroads were paying 5 cents a hundred to transfer companies for carting goods across the river from East St. Louis to the depots in St. Louis. They paid the same amount to the Grant Chemical Company for hauling their own goods across the river and also to the make-believe transfer company of the Simmons Hardware Company, the traffic manager of which organized the company's own teams into a little transfer company on purpose to get 5 cents per hundred from the railroads. Other shippers were refused the 5 cent teaming allowance. The Interstate Commission held that the payments to the Chemical Company and the burlesque Simmons transfer company were unlawful rebates.¹

Traffic within a State not subject to the Interstate Commerce Act is carried at low rates for favored shippers. Sometimes the shipper pays the full interstate rates in consideration of receiving preferences on shipments within the State to which the Interstate Act does not apply. Allowances and advantages are accorded in handling and storing. Commissions are paid, and goods are billed at less than actual weight. And goods are shipped under false classification or to a false name under the "straw man" system. This system is thus described by Mr. Gallagher, representa-

¹ I. C. C. Decis. 735, March 25, 1905.

tive of the Merchants' Exchange of St. Louis: "Instead of billing that stuff to the man I have sold it to I bill it to a fictitious man, or straw man. On the bills he is the actual shipper. I do not see him at all, don't know anything about him, but he bills the stuff to the man that I want it to go to, my customer, and it will go through all right, and by and by the straw man sends me a check for a rebate. You cannot find him; at least, I have not been able to do it. That was also described to me by a man who practices it."² Some shippers are allowed to let carloads lie 15 days without demurrage, while others have to pay for the car service they get.³ In the West I found many instances of this. In Butte, for example, one mining company does not have to pay any demurrage, while other companies are charged with demurrage.

Railway purchasing agents are instructed to buy supplies from parties who are large shippers, and these agents buy at prices which afford such shippers all the benefits they would get from a rebate on the freight rates.⁴ This is, in fact, only another way of paying rebates. The allowance of fictitious claims is still in vogue.⁵

Abuse of the "rebilling privilege" or the "expense-bill system" is still in full bloom. Rebilling properly relates to the reshipment of goods received in unbroken carload lots, so as to make them complete a continuous trip at the through rate from the point of origin to final destination. But it appears from a case passed upon this year, 1905, by the Supreme Court of Mississippi, that merchants in Vicksburg receiving freight over the Vicksburg, Shreveport and Pacific Railroad are allowed to use their "expense bills," showing the amount of freight received over that line, in a way that enables them to get reduced rates. Within 90

² Ind. Com. iv, 54.

³ Sen. Com. 1905, pp. 2284, 2429.

⁴ *Ibid.*, p. 2432.

⁵ *Ibid.*, p. 18.

days of the date of any expense bill the holder can ship out over that road an equal quantity of freight not necessarily the same he had received, but anything he chooses. By this means the Vicksburg merchants can get grain by barge and ship it out at $3\frac{1}{2}$ cents, while the merchants of Meridian have to pay 10 cents on similar shipments, and the low rate was not available either for merchants in Vicksburg who did not deal with the said specially favored associated line having the through rate.⁶

In a still more recent investigation (July 1905) by the Interstate Commission at Louisville, Ky., it appears that on presentation of an expense bill for each car of grain from St. Louis at any time within the preceding 90 days, the Louisville dealer may ship an equal amount of grain on to Atlanta at a rate 3 cents per hundred below the tariff from Louisville to Atlanta. One day during the hearing 67 expense bills were presented in evidence, some of which had been altered and the rest duplicated and even triplicated with the result of giving the guilty shippers an unlawful advantage of 3 cents a hundred over their competitors selling grain in the southeastern territory. Many of these bills were admitted to be forgeries from beginning to end, while others were altered by erasing the original words and writing in others. For example, wheat was sent as bricks by erasing the word "bricks" on an incoming bill, writing in the word "wheat" and using the altered bill to forward a car of wheat at the expense-bill discount. Every one of the bills in the bunch we are speaking of was in favor of a single Louisville firm which does an immense business in the Southeast.

In other cases goods are not billed right. Dealers have been known to ship cutlery as iron bolts, and dynamite as dried apples. False billing as to weight is practised both in freight and express shipments. The carrier acts in

⁶ Sen. Com. 1905, pp. 2484, 2490.

collusion with the shipper in some cases while at other times the carrier is among the defrauded.

Sometimes large amounts of freight are sent without being billed at all. "I know of a point," said Mr. Davies of Chicago, representing 70 fruit associations of that city, "where 150 cases of strawberries were systematically loaded on a car upon which there was never any freight paid, and the rate was $21\frac{1}{2}$ cents a crate."

"SENATOR KEAN. How long ago was that?"

"MR. DAVIES. A year or two ago. It is done to-day.

"SENATOR KEAN. Do you have knowledge of it?"

"MR. DAVIES. Yes; and so can you, if you go around the freight yards.

"SENATOR KEAN. Is this knowledge of yours a guilty knowledge?"

"MR. DAVIES. I just a moment ago told you not, and further, I will offer to this committee the records of my business.

"SENATOR KEAN. But you say you know these things are being done and have made no complaint.

"MR. DAVIES. Haven't I? I would like to show you these papers that have been nursed by the Interstate Commerce Commission for a year."

Mr. Prouty of the Interstate Commerce Commission says:⁷ "I knew some years ago that a trainload of wheat was transported from Minneapolis to Chicago for nothing. There was simply no record of that shipment on the books of the railroad."

"SENATOR CULLOM. What object had they in doing that?"

"MR. PROUTY. They wanted to prefer that man that had the wheat. Instead of paying a rebate they carried the shipment for nothing."

The power to give or withhold the milling-in-transit privilege is a serious means of discrimination. The Pennsyl-

⁷ Sen. Com. 1905, p. 2912.

vania Railroad, for example, grants this privilege to mills west of Pittsburg, but denies it to millers at Harrisburg.⁸ The Commission decided that the allowance of the privilege of milling-in-transit by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line. But the evidence in this case was too meagre and incomplete to enable the Commission to make any order in the premises involving the general extension of milling-in-transit privileges into a territory where such privileges had not been previously allowed.

By refusing to accord the milling-in-transit privilege⁹ to some when it is granted to others the railroads may crush a mill more effectively than it could be done by a hail storm in which each hailstone weighed a ton. The big Atlantic Flour Mill at Beach and Green Streets, Philadelphia, was rendered useless by the Pennsylvania Railroad's refusal to extend to it the milling-in-transit privileges enjoyed by other Philadelphia mills.¹⁰

Western roads give saw-mills operating on their lines and having logging roads an allowance of 2 to 4 cents per hundred lbs. on the through rates. Roads east of the Mississippi decline to make any such allowance, so that the Western mills enjoy an advantage of 60 cents to \$1.80 per 1000 feet in the through freight rates.¹¹

⁸ 10 I. C. C. Decis. 675, April 11, 1905 ; Rep. Dec. 1905, p. 39.

⁹ Under the milling-in-transit privilege grain may be shipped into the mill from the West, ground, and shipped out from the mill to New York or other destination at a total cost but little greater than the straight through rate from the West to New York. But a mill without this privilege must pay the rate from the West to Philadelphia, and then the local rate from Philadelphia to New York, making the total cost very much greater.

¹⁰ Some strong statements about this case may be found in the *Philadelphia North American* August 12, August 20, and other dates during August, 1903.

¹¹ Sen. Com. 1905, p. 2434. See 10 I. C. C. 1905, p. 505.

CHAPTER XXI.

MIDNIGHT TARIFFS AND ELEVATOR FEES.

"MIDNIGHT tariffs" or "flying tariffs," changed while you wait,¹ are used to give rebates and preferences all wool and a yard wide, strictly gilt-edged and in accord with the statutes made and provided for the publication and observance of schedule rates.

When a big shipper gets ready to send a large amount of freight the railroads will suddenly make lower rates, publish them just in time to fulfil the law, and the moment the shipment is made the lower rates are withdrawn. For example a miller contracted for 17,000 bags of flour. At 400 to the car, 17,000 bags will make quite a string of freight. He went to the railroad folks and got a cut rate of 5 cents a hundred on that amount. They slapped in one of these "midnight tariffs," published it, and gave notice of withdrawal just as soon as the contract was filled.²

In the spring of 1905, a grain merchant who owned large elevators, accumulated about 20,000,000 bushels of corn. When he got ready to ship, the railroads reduced the tariff 2 cents per bushel, so that he could ship at a low rate.³

¹ This trick was resorted to by the oily people many years ago, but the railroads, realizing its potency in eluding the rebate prohibitions, have lately extended its sphere of usefulness and it is becoming quite frequent. See Sen. Com. 1905, p. 2123.

² Ind. Com. iv, 544. The name "midnight tariff" by which this scheme is known probably fits the case, but "flying tariff" is perhaps still more appropriate.

³ *Outlook*, July 1, 1905, p. 579.

In some cases discriminations are the result of *intentional mistakes* in printing rate-schedules. A tariff is printed with a 3, perhaps, in place of an 8, so that a rate of 38 appears as 33, or a rate of 82 as 32. After a few copies have been printed and sent to favored shippers the error is conveniently discovered and the schedule is corrected for all ordinary shippers.

The payment of elevator or commission fees continues to be a means of discrimination beyond the reach of the law as it stands to-day. Some lines which have buyers on their roads who own elevators at terminal points allow an elevator charge or commission to their buyers, usually $1\frac{1}{4}$ cents per hundred, which constitutes practically a rebate or preference not accorded to other shippers. Other lines which have no elevators pay a rebate to their buyers equal to the elevator charge.⁴

A judgment has been obtained for \$5,600 damages in favor of the Kellogg Elevator against the Western Elevator Association and the four trunk lines — the New York Central, the Erie, the Lackawanna, and the Lehigh — on the ground of conspiracy to ruin the business of the Kellogg Elevator by discrimination in freight rates in favor of the elevators in the Combine. The charge was that the railroads contracted to pay the elevator trust $\frac{1}{2}$ cent per bushel for all grain shipped on their rails from Buffalo, whether it was elevated from lake vessels by the Elevator Trust or not. So, in effect, the Elevator Trust was given a rate of $\frac{1}{2}$ cent per bushel cheaper than the Kelloggs could get, and also that premium on the Kelloggs' business. The verdict of \$5,600 was for three weeks' operation of the conspiracy. The Kelloggs claim that the annual damage to them from discriminating rates amounts to \$50,000 or \$75,000. The case is now pending on appeal to the Supreme Court of New York.

⁴ Sen. Com. 1905, pp. 2911, 2912, Commissioner Prouty; 2123, President Stickney. See also p. 3231, and 10 I. C. C. Decis. 317.

In the investigation now going on in Kansas City (July, 1905) it appears that some elevator men get double rebates, while others get no allowances at all from certain roads. E. O. Moffat said he got $1\frac{1}{4}$ cents a hundred from the Union Pacific, Rock Island, Burlington, Santa Fe, Alton, and Missouri Pacific, but got nothing from the Milwaukee. That railway he believed paid an allowance to the Simonds-Shields Company but refused to allow him anything, though he is a heavy shipper.⁵

M. H. McNeill, representing the Chicago and Great Western, admitted that the custom was a senseless one and a wrong one, but said it had been started at Omaha and had to be adopted at Kansas City. E. P. Shields of the Simonds-Shields Company was asked by Commissioner Cockrell : "When such allowances are made are not opportunities for discrimination and the granting of rebates opened up?"

"Certainly," he replied.

"I believe there are some abuses to-day regarding the matter of allowances which ought to be corrected," said the witness.

"Do you believe double or triple allowances have been made in Kansas City?" asked Mr. Barry.

"I don't know of my own knowledge," replied the witness, "but I suspect that they have been."

⁵ Mr. Moffat was asked if he thought the allowances ought to be made. He said : "I think that it ought to be made to the big shippers. I think the man who ships 100,000 bushels a month ought to get a little better deal than the man who ships only 1,000 bushels a year."

Commissioner Cockrell replied : "There is where I think you are entirely wrong. No government could live under such a condition. The rich would soon absorb everything and the small man would be wiped out of existence. The whole business we are on now started from a railroad giving a man a rebate. The minute the railroad does a thing like that it opens the way to a swindling petty graft and bigger grafting and crooked work. It is wrong, all wrong. It is so wrong that nobody knows what to call it. Down in Louisville they call it a 'swag.' Here you call it an 'allowance.' It is all wrong."

CHAPTER XXII.

COMMODITY DISCRIMINATIONS.

UNFAIR discriminations in respect to special commodities are very common. The New Haven and Hartford charges \$80 a car on peaches from New York to Boston, 228 miles, while the same peaches come from Georgia points to New York, 1150 miles, for \$162 a car. The Commission says the \$80 rate is arbitrary and unjust and that \$50 a car would be a reasonable charge.¹

The Atlantic Coast Line Railroad made its rate on peaches depend on the valuation put on the fruit, in order that by increase of rate in proportion to valuation, shippers might be led to put low valuation on their shipments and so provide the railways with an argument against paying the real damages in case of accident or loss.²

From some places shingles are carried at rates as low as those applied to lumber, while shingle shippers at other points pay more than the lumber rates. This is held an unjust discrimination against shingles, and against the places and shippers that pay the high rates.³

Railroads make high rates on ties, higher than on lumber, in order to prevent their shipment to other parts of the country, and so diminish their value and lower their cost to the discriminating railroad. The president of one rail-

¹ 10 I. C. C. Decis. 274, June 4, 1904.

² *Ibid.*, 255, June 4, 1904. The practice was held unjust.

³ *Ibid.*, 489, Feb. 2, 1895. Duluth Shingle Co. v. Northern Pacific, Great Northern, Chicago, Milwaukee and St. Paul, and other railroads.

road stated the policy clearly: "We are simply following what we consider our interest, which is to prevent the shipment of tie lumber."⁴

Early this year, 1905, the South Side Elevated road of Chicago wanted 400 carloads of ties. The blanket rate on ties from the entire yellow pine belt to Chicago is 26 cents per hundred lbs. On shipments originating between Luzon, La., and Pearl, Miss., the Illinois Central made a special tariff (March 22 and April 6, 1905), fixing the rate on ties at 26 cents per tie, each tie to be billed at 130 lbs. This was equivalent to a reduction of the rate to 20 cents per hundred lbs., and no shipper outside of the favored region could compete in the Chicago market. It is suspected that the party who got the Elevated contract knew beforehand that the railroad would issue this special tariff, and was therefore able to underbid competitors in perfect safety.⁵

A rate of 90 cents a ton is charged on coal for a special use such as railroad supply, while the same coal must pay \$1.85 between the same points if intended for manufacturing or other industrial domestic use.⁶

It is unjust discrimination to charge more for carrying cattle and hogs than for carrying packing-house products, and the desire of the carrier to get more business by so doing is no excuse.⁷

The railroads have carried dressed meats from Omaha to Chicago at 18½ cents, while charging 23½ cents on live-stock from Iowa points nearer Chicago. The packer could buy the cattle at Fort Dodge, Iowa, ship them to Omaha, kill them and ship the dressed carcasses to Chicago, cheaper than the live-stock owner at Fort Dodge could ship the cattle to Chicago. Some years ago on arbitration, Mr.

⁴ 10 I. C. C. Decis. 452, Jan. 7, 1905.

⁵ Sen. Com. 1905, pp. 2432, 2433.

⁶ 11 I. C. C. Decis. 104.

⁷ 10 *ibid.*, 428, Jan. 1905.

Fink and Judge Cooley being the arbitrators, it was decided that the fair ratio between live-stock and dressed meats from Chicago to New York would be 26 cents per hundred for live cattle, and 45 cents for the dressed carcass. But the railroads have reversed this relation, although the Interstate Commerce Commission has decided that the rate on dressed meats should be higher than on live-stock.⁸

Recently, January 1905,⁹ the Commission has reaffirmed its decision of 1890 and held that it is unlawful to charge more for transporting live-stock from Missouri River points and St. Paul to Chicago than for carrying packing-house products between the same points, but the Beef Trust cares nothing for the opinions of Judge Cooley nor for the orders of the Interstate Commerce Commission, and the Trust controls the railroads.

On shipments from Chicago east to New York the rates are 28 cents per hundred and 45 cents on dressed beef. Formerly the same rule applied in the West, but when the Beef Trust began to build up great packing-houses at Omaha, Kansas City, and St. Paul, they wanted to make the rates on cattle from the West to Chicago higher than the rates on beef, so as to force live-stock to come to their stockyards on the Missouri River where they had a practically absolute monopoly, and the railroads obeyed their behest. Shippers fought the change, and in 1890 the Interstate Commission ordered the railroads to desist from charging more for live-stock products than for packing-house products. The railroads did not dare to raise Armour's rate on dressed beef, so they reduced the live-stock rate to 23½ cents, the same as the rate for dressed meats.

⁸ Sen. Com. 1905, pp. 3426, 3427. S. H. Cowan, attorney of Cattle Growers' Interstate Committee; *Chicago Board of Trade v. C. & A. R. R.*, 4 I. C. C. Decis. 158.

⁹ 10 I. C. C. Decis. 428. *Chicago Live-Stock Exchange v. Chicago and Great Western*. See also I. C. C. Rep. 1905, pp. 42, 63.

Armour then demanded and received a rebate of 5 to 8 cents a hundred lbs. on packing-house products. The rebate was secret at first, but after the Elkins Bill was passed the beef men made a contract with the Great Western road at the rate of $18\frac{1}{2}$ cents and the rate was published. The cattle rate remained at $23\frac{1}{2}$ cents so that Armour and his railroad allies were again in open defiance of the orders of the United States Government issued through its Interstate Commerce Commission. The new decision of the Commission, January, 1905, requiring the railroads to charge more for live-stock than for live-stock products has not been obeyed and is not likely to be.¹⁰

"Could anything more clearly show the power of the Trust," says Mr. Baker, "than this reversal of the order of rate-making as manifested in the tariffs east of Chicago, so that beef, the high-priced product, is shipped at $18\frac{1}{2}$ cents, while cattle, the low-priced product, is shipped at $23\frac{1}{2}$ cents, simply to enable the Trust to close the Chicago market — the best market in the country for export cattle — to thousands of western cattle growers? They cannot afford to ship live-stock to Chicago at $23\frac{1}{2}$ cents when the Trust can ship the products of the same cattle, weighing only 60 or 70 percent as much as the live animal, at $18\frac{1}{2}$ cents. They are therefore compelled to ship to Missouri River points where the Beef Trust is in absolute control."

A rate of \$1.25 per hundred lbs. on oranges from California to points on and east of the Missouri River, while lemons are carried for \$1 to the same points — is held

¹⁰ The United States Circuit Court has refused to enforce the order of the Commission on the ground that the Chicago Great Western reduced the rate for competitive reasons to get its share of the tariff. The Commission justly says: "If the decision of the Circuit Court in this case is sound any carrier is justified in making the widest discriminations in rates as between competing commodities, regardless of the effect upon nonfavored industries, by simply asserting the existence of general competition and the desire to increase the traffic in particular commodities over its line."

I. C. C. Rep. December, 1905, p. 64. It is to be hoped that the case will go up on appeal and a reversal of the Circuit decision be obtained.

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unreasonable.¹¹ A higher charge on rye and barley than on wheat is unjust.¹²

Western millers complain that the discrimination between flour and wheat on shipments to the East is causing them much injury and will put them out of business. The Commission decided that the difference should not exceed 2 cents a hundred, but it has no power to enforce its order and "frequently for considerable periods there is very great discrimination between the rates on flour and the rates on wheat."¹³

Railroads can discriminate against a whole industry by advancing rates on particular commodities above the fair level, as illustrated in the recent advances on hay and lumber.¹⁴

¹¹ 10 I. C. C. Decis. 590, Feb. 11, 1905; Rep. 1905, p. 31.

¹² Cannon Falls to St. Louis, 10 I. C. C. 650, March, 1905.

¹³ Sen. Com. 1905, p. 1775. Mr. Bacon of Milwaukee, speaking for a convention of shippers.

Rates to Texas also from Kansas and Missouri points are 5 cents per hundred higher on flour than on wheat, and this differential is not applied on shipments in any other direction from those points. (10 I. C. C. Decis. 1904, 55.)

¹⁴ I. C. C. Cases, 707, 1905.

CHAPTER XXIII.

DISCRIMINATION BY CLASSIFICATION.

THE intricacies of classification afford boundless opportunity for favoritism. Classification is always more or less arbitrary by necessity, and is frequently more arbitrary than necessary. One industry or wholesale trade is often charged two or three times as much as another for the same service. The New York Railroad Commission found the railroads charging twice as much on dry goods as on coffee or sugar and protested against the rule as utterly indefensible, but the railroads refused to comply with the request for a change. Iron and coal cost less to transport than grain, yet the ton-mile rates on iron and coal from Pittsburg have been at times for years together from 2 to 5 times the rates on grain from New York to Chicago.

In 1890 the Interstate Commerce Commission ordered the railroads to transfer soap from the 5th to the 6th class. In 1900 the railroads changed it back to 5th class in carload lots, and from 4th to 3d class in less than carload lots, but if shipped in mixed lots with dressed beef it goes as 5th class. So that Armour, Swift & Co., of the Beef Trust, have been able to ship soap in less than carload lots at much lower rates than their competitors.¹ The Commission ordered the roads to cease their excessive discrimination on less than carload lots, etc. The roads refused to obey. The Circuit Court has sustained the order of the Commission.

¹ Proctor and Gamble Case, I. C. C. Rep., 1903, pp. 57-61; 1905. Rep. p. 63.

Under the Illinois Central tariffs at one time it made a difference of \$40 a car if a man shipped a peck of potatoes in a car of 16,000 lbs. of strawberries. If there were no potatoes in the car so that it was not a mixed load, it cost \$40 more than if there were a peck of potatoes in with the strawberries.²

The classification of castor oil on the Lake routes affords a curious example of the freaks of tariff classing. Vegetable castor oil is 5th class, or 16½ cents a hundred, from Cleveland to Chicago, while mineral castor oil takes a rate of 25 cents a hundred.³

The law has not yet definitely touched the favoring of large shippers by excessive difference in the rates on carloads and less than carloads. There is not more than 5 per cent difference in the cost of transporting goods in carload lots and less than carload lots, and yet the rates vary from 30 to 80 percent, as a rule, and sometimes 150 percent.⁴

In a famous case three years ago, involving the rates on 400 commodities from the Middle West to the Pacific Coast, the Commission held that a differential between carloads and less than carloads, which is at once more than 50 cents per hundred and more than 50 percent of the carload rate, is *prima facie* excessive, and puts the railroad on the defensive to show special reason why so great a difference should be made.⁵ The difference between the carload rates and less-than-carload rates, involved in this complaint, was held to be excessive in many cases.

On the Yazoo and Mississippi Railroad and the Illinois Central, 1 horse can go 667 miles for \$36 and 4 horses pay \$99, while 25 horses can take the trip together for \$100. This encourages social habits. The first horse is billed at

² Sen. Com. 1905, p. 346.

³ *Ibid.*, p. 2742.

⁴ *Ibid.*, p. 18.

⁵ Business Men's League of St. Louis v. many railroads, 9 I. C. C. Decis. 319, Nov. 17, 1902.

2,000 lbs. no matter what he really weighs; the second is billed at 1,500 lbs.; and each additional animal counts 1,000 lbs. The rate is double first-class, or \$1.80 per hundred, which the Commission says is twice the fair rate.⁶

In a recent case it appeared that the Texas and Pacific was charging $42\frac{1}{2}$ cents per hundred lbs. on cattle from Fort Worth to New Orleans, and \$15 a car additional on a shipment of less than ten carloads. This addition of \$15 a car was held unreasonable.⁷ For 17 years the road made a much lower rate — 34 to 40 cents per hundred lbs., without any \$15 a car additional. In March, 1903, the rate was raised to $42\frac{1}{2}$ cents, and in October of the same year the additional charge of \$15 a car was imposed. The distance is 500 miles. The distance from Fort Worth to Kansas City is about the same, while to St. Louis it is 700 miles. The rate on cattle from Fort Worth to Kansas City is $36\frac{1}{2}$ cents, and to St. Louis $42\frac{1}{2}$ cents, without any \$15 addition. The Commission held the \$15 charge to be an unjust discrimination between the large and small shippers, and against New Orleans in favor of St. Louis.

Discriminative rates are made oftentimes without any intent to prefer one shipper to another, but simply to make things move. For example, a business man of Greensboro, N. C., wanted to build a smoke-stack of New Jersey brick, but the rates from New Jersey were too high. "A quotation was made me by the stack builder, whose office is in New York, and I remarked to him, 'That price is prohibitive; I cannot pay that price for that stack.' He said, 'That is the best I can do; but if you will tell me what you can afford to pay for that stack in competition with home-burned brick, I will see what I can do with the railroad people.' He wanted to know how soon it would be necessary for him to give me a reply, and I said, 'I want to know within ten days.' He said, 'All right; I

⁶ 10 I. C. C. Decis. 333, June 25, 1904.

⁷ *Ibid.*, 327, June 25, 1904.

will take it up with the railroad people.' His quotation included the delivery of the brick and the erection of the stack at my plant. It would require something like 50 carloads of brick to build that stack. Within a week he had his price revised, and gave me a satisfactory quotation and took my contract for the stack."⁸

The railroads, having regard to what the traffic would bear, gave the builder a special rate in order that the New Jersey brick might move over their lines to North Carolina.

⁸ Sen. Com. 1905, p. 1925.

CHAPTER XXIV.

VARIOUS OTHER METHODS.

RAILROADS are in the habit of giving special rates on stuff sent over their lines for other roads. "It is done," says one of the leading traffic managers of the country, "on everything that is handled,—supplies, coal, and material."¹ This enables any one who stands in with the management of a railroad to have coal, etc., billed at low rates to the railroad for him.

The routing of freight is the source of a double discrimination. Connecting lines in some cases pay shippers to route the goods over their roads, while in other cases the connecting lines pay the rebates to the originating line, or make an agreement with it for reciprocal favors in the routing of freight.² Shippers receiving rebates from a connecting line can afford to pay the originating road or its clerks to route the goods over the said connecting line. Mr. Morawetz says it is customary for shippers to pay clerks in the routing department \$5 or \$10 to route the goods the way the shipper desires. Or it is done by giving theatre parties or presents to wives and daughters.³

¹ I. C. C. Dressed-meat Hearings, Dec. 1904, Biddle.

² Sen. Com. 1905, pp. 351, 354, 364, 818, 2496. The routing instructions to agents of the St. Louis and San Francisco Railroad Company were introduced. The circular contained a list of the roads over which shipments were to be routed unless shippers insisted on a different routing. Agents were cautioned that "these instructions are confidential and must not be made public. Under no circumstances must representatives of foreign roads or fast lines be allowed to examine the instructions contained in the circular." (p. 351.)

³ Sen. Com. 1905, p. 818.

In the California Orange Routing Case (132 Fed. Rep. 829) the United States Circuit Court decided that an agreement between railroads as to routing, whereby the apportionment of freight to connecting roads is affected, is in the nature of a traffic pool and comes within the prohibition of pooling, Section 5, of the Interstate Act.

The Interstate Commission held that the regulations of the Southern Pacific and Santa Fe, reserving to themselves the right of routing, were unlawful under the discrimination clauses, but the court did not decide this point. (I. C. C. Rep. 1904, p. 78.)

Mr. Ferguson says the private car-lines "sell the tonnage to the highest bidding connecting line. It is purely a matter of bargain and sale."⁴

Unfair distribution of cars is an easy means of discrimination. Failure to furnish cars to complainant for shipments of grain, while supplying more than a fair proportion of cars to a competing shipper in the same town, is as effective as any rebate could be.⁵

Railways have refused cars to persons desiring to ship railroad ties which the railways did not wish to have go out of their own field.⁶

A Michigan railroad neglected to furnish the Richmond Elevator Company with cars in which to ship the hay the company had contracted to deliver, although the railroad was all the while supplying other shippers with cars for hay and straw, etc.⁷

The Pennsylvania Railroad has been recently sued by independent coal companies along its line for \$2,000,000 damages for refusal to furnish cars in fair proportion. It is charged that the mines in which the railroad company

⁴ Sen. Com. 1905, p. 354. The witness derived his information as to the sale of tonnage and reciprocal routing agreements from high officials of the railroads, pp. 354, 364.

⁵ 10 I. C. C. Decis., 1904, p. 47.

⁶ *Ibid.*, 422, Jan. 7, 1905.

⁷ *Ibid.*, 630.

is interested have had all the cars they needed, while the independents have not received cars enough to fill their orders; in consequence of which great loss has been inflicted upon them and their business diverted to the railway mines.

The B. & O. was also sued for refusing to furnish cars to the Glade Coal Company, while supplying cars to competing mines.⁸

In the case of the West Virginia Northern Railroad⁹ the Circuit Court issued a mandamus ordering the road to cease from discrimination against the Kingwood Coal Company in the supply of cars and to furnish said company with a specified percentage of cars. In affirming this decision the Circuit Court of Appeals said:

“It is insisted that the court had no power in a proceeding of this character to fix the percentage of cars the relator should have, and to command that such percentage of cars should be furnished to the relator. The acts of Congress forbade discrimination and made it unlawful to give any undue or unreasonable preference or advantage to particular persons, companies, corporations, or localities, or any particular description of traffic, or to subject them to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and vested jurisdiction in the circuit and district courts to proceed by mandamus as a cumulative remedy for violations of the statutory provisions. We are unable to accept the view that Congress intended to confine the scope of the writ to admonition merely, or to a general command to desist from discrimination, rather than from the particular action in which the discrimination consisted. By the findings, the delivery to the relator of any less than 31 percent of the supply amounted to unlawful

⁸ 10 I. C. C. Decis. 226, April 28, 1904; Rep. 1904, p. 58, — held unlawful discrimination. See also p. 78, complaint against W. Va. Northern for refusing due proportions of coal cars.

⁹ 134 Fed. Rep. 196; I. C. C. Rep., Dec. 1905, p. 65.

discrimination, and the judgment of the court did no more than to correct it."

Sometimes it is the denial of a switch, that blocks the independent; for example, the railroads controlled by the coal pool refused to put in a switch for the Johnson coal mine or to permit the company to put one in until suit to forfeit its charter for refusing equal opportunities to shippers was begun in the Ohio Supreme Court. Then the switch was put in.

The Coal Combine and its railroads have persistently pursued the policy of crushing smaller rivals by denying them transportation facilities.

An exasperating form of discrimination near of kin to this refusal of cars is the refusal directly or indirectly to take shipments for certain persons or to certain points. The Hope Cotton Oil Company operates a mill at Hope, Ark., for the manufacture of cotton-seed oil. It desired to buy seed at various points on the Texas and Pacific Railroad. This seed could only reach the mill by passing over the Texas and Pacific to Texarkana and from there to Hope by the St. Louis, Iron Mountain and Southern Railroad. The published rate from the points in question to Texarkana was $12\frac{1}{2}$ cents per hundred, and 5 cents from Texarkana to Hope. After receiving this information the agent of the Hope Company bought 49 carloads of seed on the line of the Texas and Pacific, intending to send them to Texarkana on the $12\frac{1}{2}$ cent rate and from there to Hope on the 5 cent rate. Seventeen cars were sent in this way. But when the General Freight Agent of the Texas and Pacific ascertained what was being done, he refused to allow the shipments to continue, insisting that the seed must take the broad joint rate of 67 cents applicable to class A in which cotton seed belonged. Under his orders the station agents on the Texas and Pacific refused to bill the cars in any way to Texarkana on the published local rate of $12\frac{1}{2}$ cents. The 67 cent rate amounted to \$13.40 a

ton on seed which only cost \$14 a ton, and to insist on such a rate the Commission says "was for all practical purposes to decline to receive the cotton seed for shipment on any terms."¹⁰ The secret of the situation was that the Texas and Pacific did not want the cotton seed to go off of its line. If shipped to Texarkana mills or other mills on its line the products would find their way to market over that road, while if manufactured at Hope this would not probably be the case.

Denying a private switch to one party while providing such facility for a competing dealer¹¹ may amount to a preference similar to that resulting from free cartage.

A discrimination in the place of delivery of freight may work serious injury to a shipper. For example, D. W. Miner, a dealer in beef and pork products at Providence, complains to the Interstate Commerce Commission, July, 1905, that the New Haven road refuses to deliver his merchandise at the Canal Street yard where his place of business is located, carrying his freight half a mile beyond, while delivery is made to his competitors at the Canal Street yard.

Sometimes railroads discriminate even on long hauls in interstate traffic by taking advantage of the fact that the Interstate Commerce Act does not apply to State traffic. They take the car across the State line on a "mem.-bill," then draw a new bill of lading marked "State Business," and then pay the rebate without fear of disagreeable consequences.

In other cases the full freight is charged on the way-bill, but a fictitious entry is made in the prepaid column which is to be subtracted from the total amount of charges when the bill is collected. If the freight on a car amounted to \$90, and \$15 were entered in the pre-

¹⁰ 10 I. C. C. Decis. 699.

¹¹ *Ibid.*, 47, 663. The favored party in this case was an agent for the railroad. No relief could be given.

paid column, \$75 would be collected and the consignee would be in the same position as if he had received a rebate of \$15 on the car.

Another method, akin to this, is to give the local agent at the station of delivery power to correct the way-bill, or deduct a certain percentage from every bill presented to the favored shipper. The agent forwards the amount collected as full payment, correcting his accounts so as to give himself the necessary credit, which is O. K.'d by the auditor of the road on his next visit to the station.

Large payments are made by some railroads "to encourage new industries." They have the example of cities and States and of the nation to justify appropriations for the establishment of infant industries and development of the country, but they abuse the principle by making it a cover for payments which are really rebates to favored shippers. Some of the "new industries," or infant undertakings, which the Wisconsin investigators found were being "encouraged" by cash contributions from the railroads, have been established and prosperous for 25 or 30 years, one of them being founded away back in 1873 and others in the eighties.

Sometimes the railroads make a low rate, joint or single, on certain goods when intended for a specific purpose, thereby limiting the low rate to certain favored shippers. For example, in a recent case decided on complaint of the Capital City Gas Company the railroads had made a joint rate of 90 cents per ton on bituminous coal from Norwood, N. Y., to Montpelier, Vt., when intended for railroad supply, while the ordinary combination rate of \$1.85 per ton applied to such coal carried between the same points and used for manufacturing or any other industrial or domestic purpose. This was held by the Commission to be an unlawful discrimination, on the ground that it is not permissible under the Interstate Commerce Act for two or more carriers to establish a joint through rate less than the sum

of their locals, which shall be applicable only to a particular shipper, or class of shippers, while denying such low rate to other shippers of like traffic between the same points.¹²

A method of discrimination that has spread enormously in the last year is to pay large salaries or commissions to traffic agents located at important points, on the understanding that these traffic agents shall divide their salaries or commissions with favored shippers. This is much safer than paying rebates or commissions direct to the shipper, and is one of the most difficult forms of discrimination to overcome. In the recent investigations in Wisconsin and other States this method has been found in frequent use, along with underbilling and underweighing of freight, the allowance of cartage or switching charges to favored shippers, permission to hold cars as a means of storage for considerable time without demurrage, midnight tariffs, direct rebates, etc., etc.

¹² 11 I. C. C. Decis. 104. Rep. 1905, p. 45. Citing *Wight v. United States*, 167 U. S. 512, and the *Midland Case*, 168 U. S. 144.

CHAPTER XXV.

TERMINAL RAILROADS.

ANOTHER method of preference without departing from published rates is the division of rates with private terminal companies or mere switching roads, or roads existing only on paper. A man of large experience in railroad matters said to me not two years ago that "Since injunction suits were instituted by the Interstate Commerce Commission in 1900, published tariffs have been more generally followed. But big concerns build a mile or more of railroad of their own, or incorporate their switch tracks and sidings in a railroad company, and the division of the through rate permits any commission that may be desired. That is the new kind of discrimination that is spreading very rapidly. The effect is to concentrate discrimination and the advantages it gives more and more in the hands of the largest concerns. Formerly any big shipper could get a rebate. Now only those big enough to build a railroad or own an elevator get lower rates than others." This is a little too strong. There are many other forms of preference still in prevalent use, as we have seen, but there is no doubt that the private railroad and the private car do tend to concentrate discrimination, giving greater and greater advantages to those who need them least.

They not only give the private railroads of some shippers a larger percentage of through rates than they give to the private railroads of other shippers, but they refuse to give the railroads of some shippers any division of rates while

dividing rates in this way with other shippers in the same business.¹

A few examples will make clear the private railroad or "fake terminal" method of discrimination. The first case of this kind came to light in 1903 through an investigation of the "Salt Trust" by the Interstate Commission. Hutchinson is the centre of the salt industry in Kansas. There are 16 mills, 9 of which are operated by the Hutchinson Salt Company, known as the "Salt Trust," while each of the independent mills is operated by a different individual or company. In July, 1902, the Hutchinson and Arkansas River Railroad was organized under the laws of Kansas. It took possession of about 1 mile of side tracks which had been built by the Salt Trust in connection with its works. This new Lilliputian railroad company had no equipment of any kind. The president of the Salt Trust and the president of the railroad were one and the same man, Joy Morton, brother of Paul Morton, who was then at the head of the traffic department of the Santa Fe. The Santa Fe, the Rock Island, and the Missouri Pacific — all the railroads entering Hutchinson — made an agreement with the switch-track Salt railroad to give said little 1-mile Salt Trust railroad 25 percent of the rates on bulk salt to Missouri River points, not to exceed, however, 50 cents a

¹ The Commission holds that the division agreed on must not be excessive (10 I. C. C. Decis. 1905, p. 385. *Harvester Trust and Steel Trust Cases*). But there is nothing in such granting or refusing of rate concessions that necessarily violates the interstate law, provided the little roads are common carriers for the public subject to the Act to regulate commerce. If not, the division is held unlawful (10 I. C. C. Decis., March 19, 1904, pp. 193, 505, 545, 546. *Lumber*).

The plea that the division is accorded to the little road because it controls the business of its routing does not explain cases of division between a private railroad that brings logs, etc., to the mill, and the railroad that takes the lumber, etc., from the mill. But through the milling-in-transit principle a division may be arranged between the common carrier by rail that brings the logs to the mill and the carrier that takes the lumber away (10 I. C. C. Decis. 194).

ton on all the bulk salt shipped to such points. The rate to Omaha was 12 cents per hundred and the rate to Kansas City was 10 cents. The division was therefore equivalent to a rebate of 50 cents a ton, which is of itself an excellent profit in the manufacture of salt. The result was that without departing from published rates, or apparently violating any provision of law, the trust and the railroads drove the independents out of the bulk salt business on the Missouri River and elsewhere, and an extension of the arrangement to all markets and all kinds of salt would give the Trust a weapon with which it could at any time destroy the independents.²

Barton, one of the independents, had a contract to supply all the bulk salt used by Swift & Co., at Missouri River points. The contract expired April 1, 1903. Before asking renewal of the contract Barton went to the coal people and the railroad to see what his costs were to be for the coming year. He found that coal was to be advanced 25 cents a ton and freight on it 25 cents a ton, making 50 cents a ton more on coal. As it takes 1 ton of coal to produce 2 tons of salt, the increase in coal cost meant 25 cents added to the cost of each ton of salt. Barton's former contract was on the basis of \$2.25 at Hutchinson, now he must have \$2.50. While Barton was negotiating a renewal of his contract with the Swifts, Hon. Frank Vincent, State Senator, manager of the Salt Trust, and director in the Salt Trust railroad at Hutchinson, took a vacation from the legislature, went to see the Swifts, and offered them salt on the basis of \$2.10 at Hutchinson, or 40 cents less than the independents could afford to sell it. The Trust got the contract with Swift. This gives an idea of the extent to which the railway favoritism enabled the Trust to underbid the independents.

The owner of one of the independent salt plants was asked: "From where did you meet most competition, as

² I. C. C. Rep. 1903, pp. 18-22.

far as you know?" "From the Santa Fe Railroad," he replied.

One of the most remarkable facts in the case is that the division of rates with the Salt railroad was made without even taking the trouble to find out whether or no there was any railroad at all of any kind behind the name presented in the request for a division.

"MR. MARCHAND. Then you entered into this joint arrangement with the Hutchinson and Arkansas River Railroad without really knowing whether there was any road there or not?

"MR. BIDDLE. I have done that hundreds of times."³

Another indication that the terminal railroad is not the real reason for the division of rates is found in the fact that it is not every large shipper who can get a rebate by owning a private railroad. One of the independent salt mills, the Matthews mill, had a switch built and paid for and expected to get a rebate of \$1 a car on the strength of it. But the railroad refused to give any division of rates. Matthews did not belong to the Morton family, nor have any other special claim to hospitality at the hands of the Santa Fe.

The International Harvester Company, popularly known as the Harvester Trust, was formed in 1902 to consolidate several big concerns manufacturing farm machinery. It organized the "Illinois Northern Railroad Company" and turned over to it the 17 miles of switching track in the private grounds of its Chicago works. Till the end of 1903 this vest-pocket railroad handled the cars of the Trust for a switching charge of \$1 to \$3.50 per car, the average haul being about 4 miles. For the works at Plano, another microscopic railway company, "The Chicago, West Pullman and Southern Railroad," with 4 miles of track, was organized to switch the cars of the Harvester Trust.

³ Testimony of Mr. Biddle, General Traffic Manager of the Santa Fe, Hutchinson Salt Case. I. C. C. Hearing, Dec. 5, 1903, p. 35.

The International Harvester Company owns these two railroads. Its officials are the officials of those railroads in most instances. And it absolutely controls the operations of the roads.⁴ In January, 1904, contracts were made for the division of rates to the Missouri River. The Santa Fe, C. B. & Q., Rock Island, Chicago and Alton, Great Western, Chicago and North Western, Wisconsin Central, Chicago, Milwaukee and St. Paul, etc. — practically all the railroads going west — allowed the private Trust railroads a division of 20 percent of the through rate with the Missouri River as a maximum, amounting to \$12 on an ordinary car of 20,000 lbs. of farm machinery going from Chicago to any point in Kansas or Nebraska or the Far West. The Interstate Commerce Commission says: "Since the International Harvester Company owns the Illinois Northern Railroad, a payment to the railroad is a payment to its owner, the International Harvester Company. When a line transporting a carload of traffic from Chicago to the Missouri River pays the Illinois Northern Railroad \$12 for switching that car from the McCormick works to its iron, it gives the International Harvester Company a preference of at least \$8.50 over what any other shipper of that same carload would be obliged to pay. . . . And there is no limit in law to the extent to which this shipper may be preferred to other shippers in this way."⁵ In a suit brought July 11, 1905, by R. B. Swift, a former officer of the McCormick branch of the Harvester Trust, it is declared that up to September 30, 1902, the Trust received rebates from the railroads amounting to \$500,000 through the West Pullman switch road, and over \$3,000,000 through the Illinois Northern switch road.

⁴ 10 I. C. C. Decis. 385, 392, Nov. 3, 1904. The Commission held that \$3.50 a car to the Illinois Northern, and \$3 a car to the West Pullman, would be reasonable for switching charges, and that switching charges in excess of these sums amount to unlawful preferences in favor of the International Harvester Company.

⁵ I. C. C. Rep. 1904, p. 21.

The "Chicago, Lake Shore and Eastern Railway" is another of these homeopathic railroads. It was organized in the interest of the Illinois Steel Company and is now owned by the Steel Trust (The United States Steel Corporation) which some time ago absorbed the Illinois Steel Company. Since 1897 this private railway has been allowed a division of 10 percent on business to New York and other seaboard points, 15 percent to Pittsburg, Buffalo, and other middle points, and 20 percent on traffic to the Missouri River. It also has a division on rates to the South. All Eastern and Southern lines as well as the Western roads divide their rates with this Trust road. These divisions amount to \$6 to \$12 a car for the switching service performed by the private road. Besides this, certain special divisions are made. On coke from the Connellsville region, for example, a division of 70 cents per ton is allowed. This gives the "Chicago, Lake Shore, etc.," above named, \$700 to \$1000 for hauling a train of coke 7 miles from Indiana Harbor to its plant in South Chicago, while the actual cost would not exceed one-tenth of this sum.

Railroad officers have claimed that such divisions of rates are justified because the little private road is the "gateway of the traffic." "The business originates on the little road and it controls the routing, and the division is only an application of the custom of allowing the road on which traffic originates a considerable percentage of the through rate, usually 25 percent." Other railroad men tell me that this is not true. President Tuttle, for example, says: "There is no such thing as a custom to give the initiating road 25 percent or 10 percent or any percent. The division is on the mileage basis, but if one road does special work, switching etc., a reasonable allowance may be made, 1 percent or 2 percent or whatever is fair to cover the special work or expense." Even if there were a custom to give 25 percent to the initiating railroad that could hardly explain the 70 cents per ton on traffic not originating on

the trust railroad in Chicago, but coming to it from Pennsylvania points.

Whatever may be the custom or analogy used as a warrant for these divisions it is clear that their effect is precisely the same as that of a giant rebate.

The Trust railroad in this case makes a net profit of 150 percent a year upon its capital stock of \$650,000. How much the Steel Trust as a whole gets in this way through all the private railroads connected with its various plants is not known, but the Commission says it is certainly a "sum sufficient to pay dividends on several millions of dollars of capitalization."⁶

The Illinois Glass Company at Alton, Ill., is the largest producer of glass bottles in the United States. In 1895 certain persons in its interest organized the Illinois Terminal Railroad Company, the principal business of which is to handle the cars of freight that come to and from the Glass Works. This terminal company in Alton is allowed by the railroads a division of rates amounting to 25 percent of the Chicago rate, and 15 percent of the rates to the Missouri River and to Eastern destinations, or \$8 to \$13 per car. This is the testimony of the Glass Works manager, but the Commission finds that as much as \$17.10 has been paid the Terminal Company on a car shipped from Alton to Kansas City, an amount that is nearly double the 15 percent above mentioned. This \$8 and \$13 or \$17 is a pretty heavy payment for switching a car, a service which the Terminal Company renders for \$1.50 a car when the amount is to be paid by the Glass Works.⁷

The St. Louis Preserving Company at Granite City, Ill., also gets large rebates in the form of divisions of rates with a toy railroad the company controls.⁸

⁶ I. C. C. Rep. 1904, p. 21; 10 I. C. C. Decis. 385, Nov. 1904. The Commission held that "the divisions are grossly excessive for the services rendered and afford unlawful preference for the U. S. Steel Corporation, which owns the Ill. Steel Co."

⁷ 10 I. C. C. Decis., March 25, 1905, pp. 661, 667-669 *et seq.*

⁸ *Ibid.*, p. 661.

Rate divisions have also been made by the railroads with boat lines⁹ belonging to or in league with large shippers, with "tap roads" belonging to lumber companies,¹⁰ etc., and this method of securing a practical rebate is being rapidly adopted by large concerns all over the country. A division of rates with a private line is not necessarily unfair but if there is a desire to give an unfair advantage, this system affords a cloak for it.

⁹ I. C. C. Decis., 664, March 12, 1904.

¹⁰ *Ibid.*, 707, Feb. 7, 1905; also p. 681, March 19, 1904.

CHAPTER XXVI.

PRIVATE-CAR ABUSES.

SOME of the worst discriminations now prevailing are connected with the private-car system.

The private car originated in the need for special equipment for particular purposes. It was clear that the transportation of live-stock, fruit, vegetables, and other perishable products might be facilitated by the use of special cars. When the inventors of improved stock cars and refrigerator cars went to the railroad managers, they were informed that the railroads had no money with which to make experiments in such lines, but if cars that would do the work proposed were constructed the railroads would be glad to hire them for a fair rental. So the cars were built by private companies and used by the railroads on a mileage basis. The fact that such special cars are needed in different parts of the country at different seasons, their use in any large numbers being confined on some roads to a few weeks in each year,¹ makes the local ownership of such cars by the several railroads, less convenient and economical than their ownership by car companies able to distribute the cars to advantage throughout the country so that each section may have the cars it needs, at the proper time, without unnecessary duplications of equipment.²

¹ The oil cars, dressed-meat cars, etc., of course are in use the year round, and even fruit and vegetables need refrigerator cars in the winter to keep them from freezing as well as in summer to keep them from spoiling. (Sen. Com., 1905, p. 370.)

² The present system, however, does not always give good service. In April and May, 1905, for instance, hundreds and hundreds of cars of straw-

To move the Georgia peach crop the Southern Railway would need about 3,000 refrigerator cars. The shipments occupy about six weeks, beginning about the middle of June. The Pere Marquette Railroad moves about 2,000 carloads of fruit under refrigeration from Michigan points mostly in September and October, and would need about 1,000 cars for the work. These and other roads might well hesitate to invest the sums required to provide expensive equipment when it would have to be idle the greater part of the year; but this is easily done by a car company whose cars can be employed in the orange trade from California and Florida in the winter, in the Georgia peach traffic in June and July, and in the Michigan and New York fruit business during the fall.³

The railroads began long ago⁴ and still continue paying mileage rates for the use of stock cars, tank cars, and refrigerator cars, the three chief kinds of private cars. This would be all right if the mileage rate were fair, but serious injustice results when the mileage is so great as to give the owners of the cars a practical rebate of large amount on all their shipments in such cars, as is the case with all three classes of cars above named,⁵ and especially with the

berries rotted at the stations in North Carolina for want of cars. The Armour Car-Line could not, or at least did not supply the needed cars, and as they have an exclusive contract with the Atlantic Coast Line no other cars are in the field. At one station only 4 cars were furnished in two days and 125 carloads of berries were left on the platform and the ground to spoil. The loss this season to the truck growers of this one section from insufficient car service is estimated at \$600,000. (Sen. Com., 1905, pp. 2596, 2619.)

³ Some railroads have refrigerator lines of their own; the Pennsylvania, for example, and the Vanderbilts, the Goulds, the Santa Fe, the Northern Pacific, the Great Northern, etc., but they carry the private refrigerators also. Packers and other shippers owning cars insist on sending their goods in their own cars, and making the roads pay mileage. If the road refuses, the freight goes by some other line. "They compel us to take it in their cars and pay them for the use of them while our own cars stand on the side track, or else some other road gets the business." (Testimony of James J. Hill, Sen. Com., 1905, pp. 1504-1505.)

⁴ See above, pp. 57, 58.

⁵ This mileage rebate system began long ago. Way back in the seventies

refrigerator cars of the Armour Car-Lines which are operated in the interest of the Beef Trust. The railroads allowed at first a mileage rate of $\frac{3}{4}$ of a cent a mile when the car was loaded. After a little the car companies got the roads to pay the mileage on the cars both ways, loaded or empty. The mileage rate on refrigerator cars was raised from $\frac{3}{4}$ of a cent to 1 cent over most of the territory west of Chicago and St. Louis, and the 1 cent rate also applies to the movement of refrigerator cars between Chicago and New England via Montreal.⁶ From Chicago to New York over the Vanderbilt lines is about 1,000 miles; so the mileage on a refrigerator car amounts to \$7.50 each way, or \$15 for the trip.

The car companies have secured various concessions from the railroads besides the payment of mileage loaded or empty. They require the railroads to run their cars at high speed in special trains. The average run of the freight cars owned by the leading railroads is 25 miles a day. The average run of the private tank cars (Standard Oil mostly) is 66 miles, private stock cars 72 miles, refrigerator cars 108 miles, and refrigerators operated in the beef trade 135 miles per day.⁷

There is evidence that Armour often makes his cars run

the Erie and other roads allowed the Standard Oil Company to put tank cars on their tracks and paid it a mileage sufficient to pay back the values of the cars in less than 3 years.

⁶ The 1 cent rate applies to 15 to 25 percent of the total mileage of the cars and the $\frac{3}{4}$ cent rate to the remaining mileage. (Bureau of Commerce Rep. on Beef Industry, March, 1905, p. 273.)

⁷ Evidence in I. C. C. Hearings on private car-lines, April 28, 1904, p. 8. The Beef Trust report of the Bureau of Commerce, 1905, presents some conflicting evidence and sums up the case with a conservative estimate which places the average daily run of *all* the cars owned by Armour and his associates and used in the beef business at 90 to 100 miles. In the same report, however, the refrigerator cars of the National Car-Line Company, and of the Provision Dealers' Dispatch are reported as running 300 miles a day, and the cars of Swift and Company are estimated to make 373 miles a day in Iowa. ("Report of Commissioner of Corporations on the Beef Industry." March 3, 1905, pp. 274-281.)

300 miles and even 400 miles a day. He compels the railroads to push his cars day and night whether loaded or empty. Most freight cars are loaded both going and coming, which greatly lowers the cost of transportation, but Armour requires the railroads to rush his cars back empty at full speed without waiting for any return load. Ordinary freight trains go on a sidetrack and wait till the Armour cars go by. The railroads sometimes even sidetrack passenger trains in order that a meat train may be rushed by to make a little more profit for the Beef Trust. Armour's system of checking his cars by means of his agents stationed at icing points along the principal roads keeps his central office constantly informed of the whereabouts of every car. If a train has lost time, if an Armour car is sidetracked anywhere the Armour office asks over the wires: "What's the matter?" And if a railroad agent does not do as Armour bids he may lose his position as a consequence. More than one railroad man, high in authority, has been dismissed because he did not obey the Beef Trust. If offences accumulate, some day the railroad finds that Armour has diverted his entire business to a rival line which will hurry his cars and otherwise obey his orders. What chance has the small shipper against such a system? He may own private cars, but he cannot make them run, nor can he obtain exclusive contracts such as Armour has on many roads, nor make the railroads collect excessive icing charges for him, nor hold up the roads in any other way; on the contrary, they are more likely to hold him up.

The result of high speed and the mileage rate loaded or empty, is that refrigerator cars earn for their owners an average of \$25 a month, and cars engaged in the export meat trade from Chicago frequently get \$30 and upward per month from the railroads in mileage. This is enough to pay the whole cost of the refrigerator car in 3 years, and its maintenance in the meantime.⁸ Private stock cars in

⁸ I. C. C. Rep. 1903, p. 23.

some cases net their owners 50 percent a year on the invested capital, repaying the cost of the cars in 2 years, above operating expenses.⁹ The average mileage of through stock trains on the principal lines exceeds 100 miles a day, yielding to the owner of such cars over 60 cents a day. This is three times what the railroads pay each other for railroad cars in use on a road other than the owning railway. A railroad receives 20 cents a day for each day that one of its own freight cars is on another road, while the same railroad pays the car companies 60 cents a day for the use of a stock car, and \$1 a day for the use of an Armour refrigerator car in the dressed-beef business.¹⁰ Yet a well built modern freight car costs more than the average private stock car, and nearly as much, many of them quite as much, as the average refrigerator car.¹¹

⁹ National Congress of Railway Commissioners, 1892, statement of the Committee on Private Cars, p. 52 *et seq.* The Lackawanna Line Stock Express Co., for example, netted 50 percent a year, or \$343 per car. See also 4 I. C. C. Decis. 630.

¹⁰ I. C. C. Rep. 1903, p. 24. Sometimes the payment for a refrigerator car is much more than \$1 a day. James J. Hill says: "If we take another railway company's car, we pay 20 cents a day for it for the time we have had it, and we are in a hurry to get it back; and we load the other man's car back if we have anything to put in it. That is always understood. But they do not want anything put in their cars. They say: 'Hurry it back; get it around quickly, and pay us, in place of 20 cents a day, three-fourths of a cent a mile.' They used to ask a cent a mile, but I think that has been abandoned."

"SENATOR NEWLANDS. How much does that amount to a day, say at the rate of a cent a mile?"

"MR. HILL. If they got a cent a mile and we hurried that car through to the coast, we would take it about 300 miles a day, so that they would get about \$3 a day for the car.

"SENATOR NEWLANDS. So that in the one case you pay 20 cents?"

"MR. HILL. And in the other we pay \$3.

"SENATOR NEWLANDS. And the private car-lines you pay \$3.

"MR. HILL. Yes — well, \$3 would be the extreme figure. We will say \$2.50." (Sen. Com. 1905, p. 1505.)

¹¹ A refrigerator car costs \$900 to \$1000, as a rule. A first-class steel-framed freight car costs about the same. Private stock cars of good build cost about \$800 each. (See evidence in Hearings on Private Cars, I. C. C. April, 1904, pp. 19, 100; I. C. C. Rep. 1904, p. 14.) The contracts provide that the railroads are to carry no perishable goods except in Trust cars if the Trust

Out of a total of 50,000 refrigerator cars,¹² about 15,000 are owned by the railroad lines. These earn, it is claimed, about 40 cents a day, while the cars owned by the Armours and other private car-lines earn or receive on the average 60 cents to \$1 or more per day from the mileage payments alone.

The owners of the Beef Trust cars make enormous shipments of their own, and have gained control of a vast amount of other business by offering a share of the mileage receipts and other inducements to large shippers of fruit, vegetables and dairy products, etc. With prodigious masses of traffic in their hands which they could divert to any line they chose, they have compelled the railroads to fix rates as they dictated,¹³ collect their icing charges for them, delay the cars of disobedient or protesting shippers, blacklist them, shut off their credit, carry on a system of espionage upon the business of their competitors, use their power over railroads and shippers to drive their rivals out of business,¹⁴

cares to furnish the cars. If by chance the railroads use their own or any other refrigerator cars than those of the Trust they are to charge the full Trust rates and turn over the said charges to the car-line just as if its cars had been used.

¹² Sen. Com. 1905, p. 776: 49,807 total, 15,269 railroad and 34,538 private refrigerators; 14,792 tank cars; 11,357 stock cars; 325 poultry cars; vehicle cars and furniture cars, 1,621. These with coal and coke cars and other private cars make a total of 127,331 private cars. The entire freight car equipment belonging to the railroads is about 1,700,000 cars.

¹³ The Beef Trust is one of the largest shippers in the world. Its packing-house shipments from Chicago are said to amount to some three thousand million pounds (3,000,000,000 lbs.) a year. Its shipments from Kansas City, Omaha, St. Joe, St. Louis, etc., are also enormous. There is also a vast traffic in poultry, eggs, dairy products, fruit, and vegetables, that is controlled by the Trust. Is it any wonder that a railroad president or manager should refrain from action that might lose him his share of this huge business? It would make a sad hole in his receipts. Dividends would be emaciated and might vanish or appear with a minus sign. His stock would sink in Wall Street. Angry directors, bankers, investors, and stockholders would assail him and attack his management. And as a result of defying the Trust he would put himself out of office and his road perhaps in the hands of a receiver.

¹⁴ C. B. Hutchins was the inventor of an improved refrigerator car. He

and even make exclusive contracts prohibiting the use of any other refrigerators on the lines of the contracting railroads. In some cases the railroads pay the car-lines commissions of 10 to 12½ percent of the freight rate in addition to the mileage on the cars loaded or empty.¹⁵ Certain repairs on the private cars are also made by the railroads.¹⁶ Annual passes are also granted to owners of private cars in order that their officers and agents may travel with the goods, watch the car, and look out for the care and disposal of the contents.¹⁷ A wholesale firm which owned but one car made three members respectively president, vice-president and general manager of their little car company and got annual passes for all three members on the railroads on the strength of that one car.¹⁸

One result of the exclusive contracts is that "charges for refrigeration have been enormously and unreasonably increased."¹⁹ The Interstate Commerce Commission says

built five cars in 1886, and in 1890 he had the California Fruit Transportation Company operating \$200,000 worth of cars. In two years, 1890 and 1891, the profits amounted to \$250,000 or more than the total investment, and the company thought they had something better than a gold mine. But the Beef Trust undermined them by railroad favoritism and compelled them to sell out to the Swifts.

While the California Fruit Transportation Company was fighting for its life with the Armour lines, it presented the Southern Pacific Railway Company with \$100,000 of its stock on condition of receiving an exclusive contract. The contract was made, but the Armour cars continued to go. An influence was at work stronger than the exclusive contract and the power of the California Fruit Transportation Company.

¹⁵ Evidence, pp. 101, 133, 134, 146, etc. For example the manager of the "Missouri River Despatch" operating 250 refrigerator cars testified that the Erie paid 12½ percent commissions on the freight rates in addition to the mileage. And the manager of the Santa Fe car-line said the B. & O. paid them 12½ percent commissions on dairy products in addition to the ¾ cent mileage, etc. etc.

¹⁶ Evidence, pp. 54-55, Armour Cars.

¹⁷ National Congress Railway Commissioners, above cited.

¹⁸ *Ibid.*

¹⁹ I. C. C. Rep. 1904, p. 14. Aug. 1, 1904 the Armour lines made an exclusive contract with the Pere Marquette Railroad, the fruit carrier of Michi-

that "under the operation of these exclusive contracts the cost of icing to the shipper (some shippers) has been advanced from 50 to 150 percent and that the charges in most cases are utterly unreasonable.²⁰ At first the railroads made no charge for icing. Gradually the practice of making small charges for ice was introduced, but the charges did not go much if any beyond the cost of the service. They were very mild compared to the present refrigeration taxes. The charges made by the railroads and even by the Armour Car-Line before it secured the exclusive contracts, range from $\frac{1}{2}$ to $\frac{1}{6}$ of the present Armour icing charges. From the Pacific to Duluth over the Northern Pacific or the Great Northern, which still own and operate their own refrigerator cars, the icing charge on a carload of fruit is \$25, while the Armour charge by the Southern lines is \$107

gan. Before that the railroad iced carloads of fruit free of charge. On the date named icing charges went into effect as follows:

\$25 to Chicago, Detroit, Grand Rapids, and other Michigan points.

\$30 to Cleveland, Columbus, Cincinnati, Indianapolis, and other points in Ohio and Indiana.

\$35 to Buffalo, Bloomington, and various other points in New York, Illinois, and Wisconsin.

\$40 to Des Moines, Minneapolis, Nashville, and other points in Iowa, Minnesota, Tennessee, etc.

\$45 to Duluth, Lincoln, Wichita, etc.

\$50 to New York City, Baltimore, Washington, Denver, etc.

\$55 to Boston, Hartford, Mobile, New Orleans, etc.

\$60 to Spokane, etc.

From \$25 to \$60 for what a year ago the railroad gave free of charge.

²⁰ Rep. 1904, p. 15, 10 I. C. C. Decis. 1904, p. 360. Dealers have protested against paying 4 or 5 or 6 times the fair charge for ice, and have now and then refused to pay, telling the companies they could sue for the charges. But the car companies knew a better way. They ordered the cars of the disobedient dealers delayed and notified them that in future icing charges must be prepaid on all shipments to them or from them. These orders were enforced by the railroads and the kicking dealers were helpless. (Evidence, etc., 201-203.)

With a commission business such as that involved in the case referred to, an order for prepayment of icing charges or freight rates or both means ruin. For farmers and other producers will not prepay charges on perishables, and will not therefore ship to commission merchants to whom the railroads do not give credit that permits the payment of charges at their end of the line, *i. e.*, on delivery.

per car. From Rochester to Cincinnati railroads using their own refrigerator cars charge \$5 for icing. For the same distance and time the Trust charges \$35. The icing charge for a Pennsylvania car from Silver Creek, N. Y. to Chicago, 500 miles, is \$7.75 to \$10; the Trust's ice charge is \$25 from Lawton, Michigan, to Chicago, 120 miles. The icing charge under the exclusive contract with the Armour lines is \$45 on a car of pineapples from Mobile to Cincinnati, against \$12.50 from New Orleans to Cincinnati over the Illinois Central. In 1898 the Armour charge for ice from Michigan to Boston was \$20 per car. In 1904 its charge was \$55 a car for the same service over the same route. The icing charge on an independent refrigerator car from Chautauqua, N. Y., to Chicago, 550 miles, is \$10, against \$84 in the Trust cars from Gibson to Chicago, 522 miles. In 1902, before the exclusive contract with the Pere Marquette Railroad, the icing charge from Mattawan, Mich., to Duluth was \$7.50, while the present refrigerator charge between the same points in the same Armour cars is \$45. On shipments of strawberries, etc., from the South, the Armour icing charges are \$45 a car, against \$10 to \$15 over roads that have not yet capitulated to the Beef Combine. The Armour icing charge on strawberries from Tennessee to Chicago is \$84, against \$30 on the Illinois Central and \$15 actual cost.²¹ From many points on the Pere Marquette Railroad in Michigan to Chicago where the railroad charge for refrigeration used to be \$6 a car, the rate under the Armour contract has been increased 416 percent.²² In the Duluth case above mentioned the increase was 500 percent. This, however, is more than the average.

From the great vegetable growing regions of Mississippi and Alabama to Cincinnati the charge for ice was \$27 before the exclusive contracts were made. Afterward the price was raised to \$60 and a little later to \$75.

²¹ Evidence, etc., 206, 207.

²² *Ibid.*, 207.

In the summer of 1903 John Leverone of Cincinnati received 24 cars of pineapples from Cuba. Ten cars came by the Illinois Central via New Orleans with an icing charge of \$11.37 a car. Fourteen carloads came on Trust cars via Mobile, 100 miles nearer Cincinnati, with icing charges of \$45 a car.

Even when shipments are made in railroad refrigerators from regions the Trust claims as its own peculiar territory, the full Trust charges are collected and paid over to the Trust.

For example, in August, 1904, Coyne Bros. of Chicago received an Illinois Central refrigerator car loaded with melons from Poseyville, Indiana. The freight was \$39 and the icing charge \$45. The Illinois Central icing charge for that distance was \$10. Coyne Bros. went to the manager of the railroad refrigerator service and found that the road had an arrangement by which the Trust was to be paid at Trust rates on all shipments from the melon region, whatever cars were used. If the firm refused to pay the charge they would be boycotted or taken off the credit list.

August 11, 1904, Coyne Bros. received a Louisville and Nashville car loaded with melons from Epworth, Indiana. On the bill were two charges for icing, one was the railroad charge of \$14 and the other the Trust charge of \$45. The firm asked if they were expected to pay both charges. The railroad then erased the \$14 item. The firm refused to pay the \$45 Trust charge for a service worth no more than the railroad charge of \$14, and the railroad took them off the credit list. Mr. Union, attorney for the Armour folks, came to Coyne Bros. and told their manager that they must pay the ice charges or else everything shipped to them must be prepaid. The firm found that shipments to them from the Michigan grape region were cut off. They sent their own man to load the cars, but the railroad agent refused to bill them. "I have my instructions from Armour's man here," he said, "and I must follow them."

On a car of melons from Carlisle, Ind., to Mr. Scales of Chicago, the freight was \$35 and the icing charge \$50, representing 20 tons of ice. There was no re-icing, and the car bunkers would not hold more than 6 tons of ice, so that there was a clear overcharge of \$35 for refrigeration.

J. D. Mead & Co. of Boston were charged \$99.90 by the Armour lines for icing on a car of peaches from Missouri. This is a startling sum for a service that the railroads used to perform free of charge. On another car of peaches from Maryland, the charge was \$64 for icing. As the car bunkers would not hold more than 4 to 6 tons and only one re-icing was necessary between Cumberland and Boston, the firm protested vigorously. They were told that the bill was a "trial bill."

"What is that?" they asked.

"Try to collect," said the railroad manager.

In this case, on appeal to New York, the bill was reduced to \$24, a slice of \$40 off the icing bill, which was to Mr. Mead a *trial* bill in more senses than one.

Ellis and Company of Chicago received a car of tomatoes from Gibson, Tenn., 522 miles away, and another from New Orleans, 923 miles distant. The first was a Trust car with \$74 icing charge; the other was an Illinois Central car with \$15 icing charge. That is, the Trust charge was 5 times as great as the railroad charge, though the railroad car came 400 miles further, nearly double the distance in fact that the Trust car covered.

Grapes have been shipped from the New York grape field to Boston in Vanderbilt refrigerator cars without any icing charge, while shipments in Trust cars between the same points in the same month paid \$22 for ice. The Michigan Central has given notice that it has withdrawn from the Armour contract and will handle Michigan fruit products in its own cars supplying ice at cost which it says is \$2.50 per ton. So the man who can ship over the Michigan Central will get a rate of \$15 to \$25 a car to

Boston, while the man who has to use the Pere Marquette will pay \$45 a car for ice.²³ Two Boston men recently (1905) had occasion to order each a carload of peaches from Michigan points some 20 miles apart. One car came from Coloma over the Pere Marquette with Armour charges of \$45, while the other car came from Eau Claire over the Michigan Central with the same freight rate, but only \$13.13 for icing, — \$5.63 for the original icing, \$5 for re-icing at Collingwood, and \$2.50 for re-icing at West Seneca. A year ago, before the Armour contract with the Michigan Central expired, the icing charge on both railroads was \$55 to Boston; now the Armour charge has come down to \$45, but the Armour charge for ice in the case just stated was \$9 a ton while the Vanderbilt railroads charged only \$2.50 a ton, which last the Interstate Commission in a recent case has held to be a just and reasonable charge.²⁴ There are no icing charges on dairy products. The ice is paid for by the car company and the railroad. It takes as much ice for dairy products as for fruit, but the Trust is carrying its own goods in this field mostly and not the goods of other shippers, and so it has not felt the need of changing the original arrangement in respect to ice.

The railroads have also bound themselves by secret contract to furnish by wire "such information as may be requested by the car-line's representatives." This enables the Trust to know what every other shipper is doing all over the country on the lines of the car-line-contract roads. The Armours thus have means of knowing immediately of the shipments made by competitors and the destination of the same, so that they can tell exactly what to do to capture or destroy the competitive business. If a car of apples is loaded by a competitor and billed for Worcester,

²³ Sen. Com. 1905, p. 2596; and the next item in the text.

²⁴ 11 I. C. C. Decis, 129, and Rep. 1905, p. 30, holding the Pere Marquette Armour charges excessive and approving the Michigan Central charge of \$2.50 per ton on interstate shipments by the car.

the Trust knows of it in time to run in a car of apples ahead of the competitor's and sell out the market from under him. At Buffalo, while the Trust was fighting to control the local fruit market, it forestalled, they say, every shipment that was made to its competitors.

The Armour lines have another advantage, through the arrangement of the freight tariffs, and the friendly inspection methods, or non-inspection methods, which enable them to ship dairy products, fruits, vegetables, etc., at much lower rates than others. Packing-house products, *i. e.*, hams, bacon, lard, etc., go from Chicago to New York in carloads at 30 cents a hundred; fresh meats, 45 cents; eggs, 65 cents; poultry, 75 cents; butter, 75 cents, etc. The Armours have a practical monopoly on packing-house products and the fresh-meat business, as they own all the slaughter houses of any importance, with 2 or 3 exceptions in the country. So the bulk of their own goods go at 30 and 45 cents which are regarded by railroad men as very low rates for goods transported in refrigerator cars. On the other hand rates upon dairy products are very much higher, and most shippers have to pay those rates. According to all rules of classification packing-house products should pay higher rates than fruit; but, in order to help out the infant beef industry, a commodity tariff is arranged of which this is a sample:²⁵

	Distance.	Fruit third class.	Beef (commodity rate).	Difference.
		Cents.	Cents.	Percent.
Chicago to Duluth . .	478	44	28 $\frac{1}{2}$	54
Kansas City to Duluth	699	53	40	33
Omaha to Duluth . .	504	45	35	28
Sioux City to Duluth .	432	45	35	28
Cedar Rapids to Duluth	409	44	28 $\frac{1}{2}$	54

²⁵ Sen. Com. 1905, p. 369.

President Ripley of the Santa Fe declares that the rates on beef products between Kansas City and Chicago are so low that every carload is carried at a loss to the roads. Here are his figures :

Dressed meats: Actual cost per car, \$82.19; revenue, \$42.19; deficit, per car, \$40.

Packing-house products: Cost per car, \$85.03; revenue, \$56; deficit, \$29.03.

He also asserts that cattle are now hauled at a loss.

Other witnesses have disputed President Ripley's statement of cost, but however this may be it is evident that the Beef Trust has been very generous to itself in the rates it has compelled the railroads to adopt for its shipments.

The railroads do not like to be bossed either by the Beef Trust or the Standard Oil, but they declare that they cannot help themselves. President Ripley says: "The packing-house business to-day is concentrated in so few hands that this fact, together with the competition between the railroads, practically makes it possible for the latter to dictate rates for dressed beef and the packing-house products."

President Stickney of the Great Western Railroad says: "In fixing the rate on dressed meat we don't have very much to say. The packer generally makes the rate. He comes to you and asks how much you charge for a certain shipment of dressed meats. The published tariff may be 23 cents a hundred, but he will not pay that. You say to him: 'I'll carry your meat for 18 cents.' He says: 'Oh, no, you won't. I won't pay that.' Then you say: 'Well, what will you pay for it?' He then replies, 'I can get it hauled for 16 cents.' So you haul it for 16 cents a hundred."

President Calloway, speaking to the Interstate Commission about the speeding of the beef cars and other Armour exactions, said:

"We do not do these foolish things from choice. I will say that the thing is just as bad and foolish and stupid as

can be, but what are you going to do about it? We have built up these dressed-beef men and they have all got their own cars, and they can dictate what they are going to pay. They just keep these cars humping. We unload them and get them back to Chicago just as quickly as we can. The Pennsylvania people also were very much disinclined to allow or foster this dressed-beef business, but were forced into it."

Very few railroads have dared to fight either Armour or Rockefeller openly, but secretly the railroads did combine to fight these men and employed an agent, Mr. Midgley of Chicago, for that purpose, whose investigations and disclosures have done much to throw light upon the hidden ways of the Trust magnates.

Mr. Midgley told the Interstate Commission in April, 1904, how the representatives of sixty railroads met in St. Louis in 1894 and tried to stand up against the Trusts, beginning with a reduction of the extortionate mileage rates on tank and refrigerator cars, but they could not free themselves from the yoke of oil and beef. The Standard gave all its shipments to the Great Western, which agreed to pay the old mileage. The other lines out of Chicago could not get a carload to St. Paul or the Missouri River. The railroads surrendered finally to both the Standard Oil and the Beef Trust. They reduced the mileage rates on stock cars, railroad cars, and other cars not controlled by the Trusts to 6 mills per mile, but excepted refrigerator and tank cars out of respect to the power of Armour and Rockefeller, because, the trunk lines said, referring to the power of these Trusts: "We have never been able to stand up against it."

We have not yet finished with the favors shown to Armour. The railroads as a rule inspect the loading of every car and the unfavored shipper cannot mix eggs or poultry with low-class provisions and bill it all at a low rate. But the Armours can do this, for inspection in their case is a

mere form. There is one inspector for shipments that average 75 cars a day. The inspector could not watch them all if he would, and in fact he simply inspects the Armour records and takes their word for the contents of the cars.²⁶

It is charged that Armour not only gets large quantities of high-class freight carried at the rates appropriate to lower-class freight by unreported mixing of his goods in carload lots billed at the lowest rate applicable to any of the goods in the car; it is also further charged that the space beneath the beef that is hung up in the refrigerator cars is often crowded full of poultry, eggs, etc., which are carried for nothing. No wonder Armour can undersell his rivals all over the country and ruin his competitors in any market he chooses to enter.

The Beef Trust has compelled the railroads to fix a very low minimum carload limit — 20,000 lbs. on dressed beef, etc., against 26,000 to 30,000 lbs. on products the big Trusts are not interested in. If a load is below the carload limit it has to pay less-than-carload rates, which are 20 percent or more higher than carload rates. It is for the interest of the railroads to keep the minimum carload limit at a good height to prevent hauling cars with small loads and low rates, and to reduce the effect of the prevalent custom of billing Trust cars at the minimum no matter how heavily they are really loaded. The railroads have made efforts to unite on a higher carload limit, but without avail so far. On Dec. 12, 1903, it is said, 16 presidents and managers of the greatest railroads in America met in New York and decided to make 24,000 lbs. the minimum on dressed meats. The proceedings were under promise of secrecy by all concerned. But within two days the Trust people knew

²⁶ I. C. C. Beef Hearing, 1904, p. 165 *et seq.* It is a physical impossibility for a man to inspect the loading of 75 or 100 cars a day, and if an inspector is overzealous and conscientious in watching the cars he can attend to, the Trust has the railroad dismiss him.

all about the secret meeting, and they took measures which prevented the new order from ever taking effect. No agreement has ever been formulated that will stand against the power of the Trust, the seductiveness of its promises of diverting new masses of business to the yielding road, and the terror of its threats of withdrawal of traffic from the unyielding.

These advantages — excessive mileage rates, high speed, exclusive contracts, exorbitant icing charges, espionage of competitors, control of tariffs, low carload limit, and go-as-you-please inspection — have the same effect as a very large rebate; the private-car owners can ship at very much lower cost than ordinary unprivileged shippers. The profits are immense — \$72,000 a day, it is said for the Armour cars.

It is estimated that the railroads pay the Beef Trust's car-lines about \$25,000,000 a year in rebates or payments in practical violation of the law.

On the basis of the very moderate Beef Trust Report of the Department of Commerce, Mr. Baker figures the annual profits on the 14,000 Armour refrigerator cars, from rentals alone, at \$200 net per car, or \$2,800,000 — nearly \$3,000,000 a year, not including the enormous sums extorted in excessive icing charges, nor the rebates and commissions paid by the railroads in addition to the mileage. The estimate of \$200 a car is probably too low, for Mr. Robbins, manager of the Armour Car-Lines, has testified that they rent old, inferior cars to breweries, etc., at \$204 to \$280 per year.

Mr. Baker says: "Can any simple-minded person see any difference between a payment of \$3,000,000 net profit on mileage annually to a favored shipper like Armour, and an old-fashioned cash rebate of \$3,000,000? I confess I cannot."²⁷

Mr. Baker has deducted operating expenses, repairs, and a liberal allowance for depreciation, but he has not allowed

²⁷ *McClure's* for January, 1906, p. 323.

for fair interest upon the capital invested in the cars, a charge amounting to \$650,000 a year which should be deducted from the \$2,800,000 in order to get the portion of the mileage payment which is really equivalent to "an old-fashioned cash rebate," — an article that is not so old-fashioned, however, as to be out of use, by any means, as we have seen.

Wherever it serves their purposes the car-lines share their rebates with important shippers. This has been of special service in inducing large shippers like the fruit growers of California and the South to give their trade to the profit-sharing car-lines. The car-lines would pay shippers a bonus on condition that such shippers would call on the railroad for the cars of the agreeing car-line. Both refrigerator lines and stock car-lines use this method. Sometimes half the mileage is paid to the favored shipper. Sometimes \$10 or \$15 or even \$25 and \$35 a car is paid back to the shipper by the car-line, which is of course a rebate pure and simple, and has precisely the same effect when paid by the car-line as if paid by the railroad directly to the shipper.

The Santa Fe car-line found it necessary to give a rebate of \$25 a car in California in order to get traffic in competition with the Armour Car-Lines and on shipments going beyond Chicago the rebate that seemed necessary to get business was \$35 a car. So Mr. Leeds, the manager of the Santa Fe car-line testified in April 1904 before the Interstate Commerce Commission. Part of Mr. Leed's testimony in answer to the questions of the Commission and of its counsel Mr. Marchand was as follows: ²⁸

²⁸ See testimony before the I. C. C. April, 1904, p. 27. Mr. Watson's memory was very hazy. He could not remember what he had formerly testified on this subject before the referee. Neither could he tell what "U. P." meant nor recognize the clear meaning of "C. & A." in the car-line account books, though every one familiar with railway matters knows that "U. P." stands for Union Pacific and "C. & A." for Chicago and Alton. Mr. Marchand, counsel for the Commission, drew some curious non-information and mal-

"MR. LEEDS. This is the first year that we entered into the deciduous fruit business in Northern California, and I met the competition which we found there when we began business.

"MR. MARCHAND. What competition?

"MR. LEEDS. I think it amounts to \$25 a car.

"MR. MARCHAND. \$25 a car?

"MR. LEEDS. Yes, sir.

information from Mr. Watson, the former head of Porter Brothers, who were large shippers of fruit in Chicago.

"MR. MARCHAND. What commission did you receive from the railroads on account of Porter Brothers up to that time?

"MR. WATSON. I told you that was all stopped about four years ago, to the best of my recollection."

"MR. MARCHAND. Do you remember receiving from the Union Pacific Railroad Company \$1,400 in 1898 — January 25, 1898?

"MR. WATSON. I do not.

"MR. MARCHAND. You have no recollection of that?

"MR. WATSON. No, sir.

"MR. MARCHAND. In 1899 there appears upon the ledger of Armour & Co., or rather the Fruit Growers' Express, an item of \$47,000, a credit. Do you know where that came from?

"MR. WATSON. I do not know anything about the books of Armour & Co.

"MR. MARCHAND. Do you remember having received from C. & A. as on the books of Armour & Co., on the 10th of October, 1899, the sum of \$45,219?

"MR. WATSON. I do not. I guess if you look it up you will find it is 'credits and allowances.'

"MR. MARCHAND. 'C. & A' stands for 'credits and allowances'? What does 'U. P.' stand for?

"MR. WATSON. I do not know.

"MR. MARCHAND. Does that stand for 'Union Pacific'?

"MR. WATSON. I do not know whether it does or not."

Mr. Robbins, vice-president and manager of the Armour Car-Lines, was also afflicted with loss of memory, which was specially unfortunate in view of the fact that the Trust had destroyed the accounts some time before the Hearing.

"MR. MARCHAND. Can you explain the item of \$14,000 paid to the Union Pacific?

"MR. ROBBINS. No, sir; I can not."

"MR. MARCHAND. Is there anybody in your employ that can?

"MR. ROBBINS. I do not think so.

"MR. MARCHAND. You say you have destroyed your records.

"MR. ROBBINS. Yes, sir."

"MR. MARCHAND. By whom?

"MR. LEEDS. We had only one competition.

"MR. MARCHAND. Who was your competitor?

"MR. LEEDS. The Armour Car-Line.

"MR. MARCHAND. And it was necessary to give \$25 or more in order to secure the traffic — was that your idea?

"MR. LEEDS. I believed so.

"COMMISSIONER CLEMENTS. Uniformly \$25 a car?

"MR. LEEDS. I think there would be some exception, as to business farther east than Chicago.

"COMMISSIONER CLEMENTS. Would it be more than that?

"MR. LEEDS. Yes, sir.

"COMMISSIONER CLEMENTS. What on Eastern business?

"MR. LEEDS. An additional \$10.

"COMMISSIONER CLEMENTS. \$35?

"MR. LEEDS. Yes, sir.

"COMMISSIONER CLEMENTS. You pay \$25 back to Chicago and points west of Chicago?

"MR. LEEDS. Yes, sir.

"COMMISSIONER CLEMENTS. And \$35 to points east of Chicago?

"MR. LEEDS. That is what it would amount to.

"COMMISSIONER PROUTY. Do you agree to do that before the shipment is made, or afterwards?

"MR. LEEDS. Before.

"COMMISSIONER PROUTY. Are your agents authorized to make that discount?

"MR. LEEDS. No; they are not.

"COMMISSIONER PROUTY. Where is the agreement made, and with whom?

"MR. LEEDS. Myself.

"COMMISSIONER PROUTY. Do your agents there know anything about it?

"MR. LEEDS. I do not think they know what it is. They may know that something of that kind is going on, but not what it amounts to.

"COMMISSIONER CLEMENTS. How does the shipper know that he can get this \$25 and \$35 back?

"MR. LEEDS. Well, he probably could not ship if he did not know it.

"COMMISSIONER CLEMENTS. How does he find it out? You say your agents there do not inform him.

"MR. LEEDS. Well, I spent about three months there in the past year.

"COMMISSIONER CLEMENTS. You have advised them all that that was done, have you?

"MR. LEEDS. We sought the business."

Mr. Watson appears to have received on California shipments about \$50,000 a year in rebates from the Fruit Growers' Express (now an Armour line), and perhaps the amount was nearer \$100,000.²⁹

The reduction of icing charges to favored shippers is, of course, only another way of paying rebates. Yet the car lines contend that icing charges are compensation for a private service which is not part of the transportation service, and therefore outside the Interstate law. The Interstate Commerce Commission says: "It has been very

²⁹ I. C. C. Hearing on Private Cars, 1904, pp. 147-149. Mr. Brown, counsel for the Santa Fe, said to the Senate Committee, 1905, that he wished to put on record a sweeping denial that the A. T. & S. F. Co. has made any discriminatory rates or paid any rebates. The next moment, in answer to a question about the reduction of \$25 a car below the published tariff, to which Mr. Leeds testified as given by the Santa Fe car-line, Mr. Brown said: "It was a rebate given to every one." (Rep. Sen. Com. on Interstate Commerce, May, 1905, p. 3140.) He first said the road did not give any rebates, and then admitted it did give rebates, but said it gave the same rebate to every one that shipped. The coal mines that paid the Santa Fe \$4 against \$2.90 paid by the Colorado Fuel Co. would hardly agree to that statement. But Mr. Brown had in mind the car-line case in which they said the same rebate was given to every shipper. Mr. Leeds said it was a secret rate, and that he went to California and solicited business from various shippers. Under such circumstances, the fact that every one who shipped got the rebate does not eliminate discrimination but accentuates it. The discrimination is against the man who does not ship, the man who is not informed of the secret rebate. The Santa Fe car-line informed such dealers as it chose. No others could afford to ship on the Santa Fe. The instructed dealers could easily hold the market at prices that would prevent the uninstructed from thinking about shipping such goods.

customary in the past, and the practice still prevails in some quarters, to allow to particular shippers a reduction in these refrigerator charges. Testimony recently taken at Chicago shows that one large shipper of California to various eastern destinations was allowed concessions of this kind, which probably aggregated in a series of seven or eight years several hundred thousand dollars.”³⁰

The testimony of H. J. Streychmans before the Commission at Chicago, May 12, 1905, throws much light on the Armour Car business. Mr. Streychmans was for over 4 years, from April, 1900, to August 1904, in the employ of Armour & Company, and the Fruit Growers' Express, one of their car-line systems. One of his duties was to check ice bills. He says the Armour Car-Lines generally pay \$2 to \$2.50 a ton for ice, except on the St. Paul and Northwestern and Erie. On the Northwestern the Armours paid \$1 a ton for ice, and on the Erie \$1.25 or \$1.50. “These were the main lines. The Northwestern and St. Paul handled practically all the green fruit shipments, and the Erie used to get the shipments east.” The profits were “five or six hundred percent.” On the very long hauls the percentage was not so high. From Fresno, California, to Boston, for example, the cost of icing was about \$38 and the Armour tariff charge for icing was \$125, leaving a margin of \$87 a car.

On some roads Streychmans says that rebates were paid the Armours on ice. The Chicago, Milwaukee and St. Paul, for example, billed the ice at \$2.50, but in paying the railroad for the ice the Armours put in a rebate claim for \$1 a ton, reducing the net cost to \$1.50. On the Texas and Pacific, the company furnishing the ice remitted \$1 per ton making the net price \$2.50. Ice cold rebates were also paid at Buffalo.

The Armours in their turn made “allowances” to favored shippers. Streychmans had to make up “allowance

³⁰ Rep. 1904, p. 13.

statements" "showing the number of cars shipped by the shippers and giving him a rate of 60 percent of the tariff rate." A "rebate of \$15 to \$25 a car" was paid back. The last statement Mr. Streychmans put in typewriting before leaving the Armour service in California was for a rebate of 45 percent to Alden Anderson, Lieutenant-Governor of California. The witness saw on the office file statements of rebates to the Southern California Fruit Exchange of \$10 a car on 1904 shipments of oranges, etc. A number of shippers in California got rebates amounting to 45 to 50 percent of the icing charges. They paid the actual cost of icing plus a bonus of \$10 to Chicago, \$15 to New York, and \$20 to Boston. The cost and bonus together were ordinarily less than half the tariff charges. For instance, the Armour ice tariff to Boston from Southern California was \$120, the cost \$38, and the bonus \$20, — \$58 total, or a little less than half the tariff. The full tariff rates were collected and the difference paid back. Shippers not in on the secret-rebate arrangement paid the full rates and got no discount.

From Portland, Ore., to Chicago the Armour icing charge was \$45, because the Northern Pacific cars are there to compete; but further south, at Medford, Ore., where there is only the Southern Pacific, in league with the Armours, the icing charge to Chicago is \$75.

When possible the car-line runs the cars without ice, sometimes for long distances, but charges the shippers for icing just as if it had been done.

Some of the railroads pay a bonus for the Armour business, the St. Paul, the Northwestern, and the Grand Trunk, for example; in other words, the Armour lines not only charge extortionate rates for icing and get a mileage on their cars loaded or empty, but in some cases sell their tonnage to the railroads. In California, however, the witness believes there is a traffic commission to settle questions of the division of traffic between the

Sante Fe cars and the Armour cars on the Southern Pacific.

Mr. Streychmans as a confidential clerk was supplied with a secret code for use in his correspondence. The inside title-page says: "Transportation Department, General Offices, 205 La Salle Street, Chicago, Ill. Cipher code No. 100; for exclusive use between themselves and H. Streychmans. July 1, 1902. Armour Printing Works, Chicago."³¹

Some of the cipher words and their meanings are as follows:—

Launching — Can make rebate.

Laundry — Force payment higher rebates.

Laura — Handle rebate matters very carefully.

Laurus — Pay rebates.

Lava — Pay rebates from cash on hand.

Lavello — Rebate must be confidential.

Lavishment — Working for rebate on.

Kinsley — Shade rates a little rather than lose business.

Apples — What allowance is necessary to secure business.

Joculariss — Divide rate.

Jewelry — Rates being secretly cut by all lines.

Judiciary — Keep your rates below all others.

Junior — Rates must be made which will secure the business.

Junk — If necessary to secure the shipment you can make the rate to.

Juvenal — Maintain rates unless others cut.

³¹ Mr. Streychmans has been accused of stealing this code book and also certain letters and papers, but in fact he took no original papers, but only carbon copies of letters and statements he wrote for the company, and the code book was put into his possession for use in his work by the secretary of Armour's general manager. If any charge of stealing or any other criminal charge could be made, Streychmans would long ago have been prosecuted by the Beef Trust people. When he began giving publicity to the facts in his possession the general manager tried to buy him off. He was shamefully treated by some of the Armour officers, and partly in revenge, probably, and partly in gratitude to the editor of the San Francisco *Examiner* for helping him out of California and the Armour grip, he gave the editor copies of letters, etc., the publication of which led to his examination by the Commission.

Kadmaster — Manipulate rates so as to.

Kalatna — Meet any rate offered.

Footpath — Interstate Commerce Commission.

Footprint — Avoid service of summons from I. C. C.

Footrot — Meeting of the I. C. C. at — on — to consider question of —.

Imprint — Martin A. Knapp of New York, Chairman.

Imprinted — Judson C. Clements of Georgia.

Imprinting — James D. Yeomans of Iowa.

Imprison — Charles A. Prouty of Vermont.

Improbitas — Joseph W. Fifer of Illinois.

Improbability — Edward A. Mosely, Secretary.

Armour — Arrange this with the utmost secrecy.

It is evident that the Armour Car-Lines make a business of arranging secret rebates, evading the law and eluding the Interstate Commission.

There are some 300 private car-lines in the country owning and operating about 130,000 private cars. But the law of concentration is acting on the private cars as well as on the railways, and the private cars are rapidly consolidating in few hands. Speaking of this movement in the refrigerator business, the Interstate Commission says in its Report for 1904, p. 14: "Some years ago there were a number of these private-car companies which provided refrigerator cars for the transportation of fruit under refrigeration. Some of these were the Fruit Growers' Express, the Kansas City Fruit Express, the Continental Fruit Express, and the Armour Refrigerator lines. These companies were all independent of one another originally, and their cars were used in competition with each other. . . . At the present day all the above car companies have been absorbed by the Armour Car-Lines Company, which has to-day, in our opinion, a practical monopoly of the movement of fruit in large quantities in most sections of the country. There is the American Transit Refrigerator Company, which operates over the Gould lines, and the Santa Fe Fruit Express,

which operates over the Santa Fe System, and there are numerous refrigerator lines, having a small number of cars and engaged in a particular service, but we know of no company other than the Armour Car-Lines which could move the peach crop of Georgia or the fruits of Michigan. And this company, having acquired sufficient strength to do so, has adopted the rule that it will not allow its cars to go on the line of any railroad for the purpose of moving fruit from points of origin on that railroad, unless it be under what is known as an exclusive contract."

By force of the enormous shipments the Armours control they have compelled railroad after railroad to make the exclusive contracts they desire, fix rates at their dictation, collect exorbitant icing charges, give them an excessive mileage allowance, return their cars empty if they will at high speed instead of detaining them for loading back, etc. And "if any railroad dares to disobey their orders when they impose a requirement it will not get any more of their traffic. The boycott cannot be visited more effectively upon the railways. That is the secret of the whole situation. They are the largest shippers, the most arbitrary, the most remorseless that have ever been known."³²

Is it any wonder that Mr. E. M. Ferguson, representing a dozen associations of fruit and grocery and produce houses, should tell the Senate Committee that the "situation is tantamount to commercial slavery"? "It must be plain to all that commercial freedom in any line of industry has ceased when a gigantic trust like the Armour interests are permitted, through ownership and operation of private car lines to absolutely control the common highways in so far as the use of such highways may be required in the

³² Testimony of J. W. Midgley, for over 20 years commissioner, chairman and arbitrator for various Western railroads. I. C. C. Hearing, April, 1904, p. 8. The reader who is specially interested in the Beef Trust and its doings should send for a copy of this Hearing, and those of 1901-1902. The report of the Bureau of Commerce Mar. 3, 1905, and Mr. Baker's articles in *McClure's* for Jan. 1906 and following months, are also of the deepest interest.

transportation of that particular kind of traffic for which their cars are a necessary instrumentality of carriage, thus enabling the Armour interests (who, it will be remembered, are also merchants in the commodities transported in their cars) to completely dominate over all independent dealers to the extent of fixing rates, conditions, and terms under which such independent dealers may use the common highways." ²³

The fate of a man left to the mercy of the Armours and the mild influence of the Sermon on the Mount is similar to the fate of a man without a gun encountering a tiger in the jungles of Africa. Even the Government seems to be unable to compel justice in this case. The big guns of the Federal courts have little or no effect on the packers and the railroads they have benevolently assimilated. They disobey injunctions as freely as they do the principles of Christianity and the dictates of conscience, with the excuse perhaps, as to the last, of lack of acquaintance.

Standard Oil still practically controls the railroads for the most part so far as the transportation of oil is concerned, manipulating rates and service so as to favor its own business and hinder or destroy the business of competitors.

In the recent examination of Standard Oil methods by the State of Missouri, L. C. Lohman, for 30 years an oil dealer at Jefferson City, testified that he had been forced to abandon his dealings with independent oil companies because the Missouri Pacific and Missouri, Kansas, and Texas roads refused to accept oil for shipment to him from these companies.

²³ Sen. Com. 1905, p. 311. The organizations represented by Mr. Ferguson are the Western Fruit Jobbers' Association; the National Retail Grocers' Association; the Minnesota Jobbers' Association; Wisconsin Retail and General Merchandise Association; Wisconsin Master Butchers' Association; Minnesota State Retail Grocers' Association, Superior, Wis.; Lake Superior Butchers' Association, Duluth, Minn.; Duluth Commercial Club; Duluth Produce and Fruit Exchange, and the Iowa Fruit Jobbers' Association.

The railroads discriminate against the Texas oil wells by making the rates on north-bound oil considerably higher than on south-bound oil. Again the rate to various points from Lima, the centre of the Ohio and Indiana oil fields, is considerably higher than from Chicago, the Standard Oil shipping point. For example :

	Miles.	Rate per hundred.
Lima to Chattanooga	470	43
Chicago to Chattanooga	643	39.5
Lima to Mobile	916	32.5
Chicago to Mobile	926	23
Lima to New Orleans	962	32.5
Chicago to New Orleans	922	23
Lima to Memphis	512	26.5
Chicago to Memphis	526	18
Lima to Cincinnati	132	10
Chicago to Cincinnati	305	11

It costs $3\frac{1}{2}$ cents more per hundred to ship from Lima, 470 miles, than from Chicago, 643 miles; $9\frac{1}{2}$ cents more from Lima, 916 miles, to Mobile, than from Chicago, 926 miles, to the same place. The shorter distance has the higher rate till you get 50 percent off, then the half distance from Lima has about the same rate as the 100 percent distance from Chicago.

The average rate on 25 staple commodities is about 2 cents higher per hundred from Cleveland to New Orleans than from Chicago to New Orleans, while the rate on petroleum is 8 cents higher. This is a strong discrimination against the Cleveland refineries in favor of the Chicago shipping point at Whiting. The Standard Oil is the only shipper of oil from Whiting.³⁴

The methods by which the Standard controls New England are still in full swing. The report of the Industrial Commission tells how the Standard Oil railroads keep the independent refineries at Cleveland out of New

³⁴ Rep. U. S. Industrial Commission, iv, p. 53.

England through high rates on oil by rail, while the Standard ships by water, and by making oil second class unless the shipper has a private siding or tank opposite the rails of the New Haven and Hartford Railroad, but fifth class if the shipper has such siding or tank, *i. e.*, if the shipper is the Standard Oil Co.⁸⁵ "The freight rate from Cleveland to Boston," says the report, "was formerly 22 cents per hundred pounds alike on iron articles, grain, and petroleum. But since the Interstate Commerce Act the rates have been changed, so that the rate on grain is 15 cents per hundred pounds, on iron 20 cents, and on petroleum 24 cents. Again, on almost every commodity through rates are made from Cleveland and other western points to points reached by the New York, New Haven and Hartford Railroad. On petroleum there are no through rates, but a local rate is added to the Boston rate. Moreover the New York, New Haven and Hartford prescribes that petroleum and its products shall be in the second class of freight unless the person to whom it is shipped has a private siding or tank opposite the rails, in which case it is fifth class, the rate for fifth class being probably one-half that for second class. These arrangements are explainable by the fact that the Standard Oil Company ships oil from its seaboard refineries to Boston largely by tank steamers, and distributes it from there for a comparatively short distance at the local rates."⁸⁶

In the West the Standard has persuaded the railroads to lift the rates on oil so high as to make competition

⁸⁵ The Standard has the tanks and private sidings all over the New Haven's territory while few are owned by the independents. Persons without these facilities must pay 2d-class rates, while the Standard Oil pays 5th class. The 5th-class rate between Boston and New Haven is 10 cents per hundred, while the 2d class is 20 cents, the difference probably representing several times the profit in handling one hundred lbs. of kerosene. (Commissioner Prouty, in *Annals of American Academy of Political and Social Science*, January, 1900.)

⁸⁶ *Ind. Com.* iv, p. 53.

difficult. The rate from Pennsylvania points to Chicago was raised from 17½ cents to 19½ cents, and the rate from Chicago to St. Paul went up from 10 cents to 20 cents.⁸⁷ The Standard pumps oil to Chicago by pipe, and the higher the rates by rail the more impossible it is for the independents to compete. Of course it is against the direct interests of the railway stockholders to have rates so high as to check the traffic in oil by rail, but the Standard does not care about that, and it is a small matter even to the railroad managers compared to incurring the displeasure of Standard Oil, which has sufficient control in the railway world to cause any disobedient railroad most serious loss and even make a railroad war upon it.

Before the Standard found other methods of controlling transportation and milking the public it used to receive half a million dollars a month in rebates. But some railroad men who are in a position to know say that since 1900 the Standard Oil has not asked for rebates, the reason being that the tariffs are made in such a way as to give the Trust all the advantage it requires.⁸⁸

The fight now going on in Kansas between the people and the Oil Combine has forcibly illustrated the methods of the Standard. When the Kansas oil fields began to show signs of large prosperity the Standard went into the State, put up refineries and storage tanks, laid pipe lines, and began to build a through pipe line from Kansas to its Chicago station at Whiting. By getting the railroads to raise their rates on oil, compelling producers to agree to sell their oil only to the Combine, resorting to cut-throat competition to drive them out of any market they attempted to enter, they practically captured the oil business of the State and were able to put the price of crude oil down and squeeze the independents until many of them were ready to sell out to the Combine at the victor's own price.

⁸⁷ Sen. Com., 1905, pp. 2740, 2742.

⁸⁸ See *The Outlook*, July 1, 1905, p. 578.

The power of the Trust over the railroads is illustrated by the case of Mr. I. E. Knapp of Chanute, who went to the field in 1899 and secured a number of paying wells. He also obtained a market for his crude oil with the Omaha and Kansas City gas companies, transporting the oil in tank cars of his own. In the recent investigation in Kansas it appeared that he had enlarged his business till he had 20 tank cars in transit. He paid the railroads 10 cents per hundred lbs. to Omaha and Kansas City, and they counted the weight at 6.4 lbs. per gallon. With this rate and $\frac{3}{4}$ of a cent mileage on his cars he was able to make a good profit, but suddenly in May, 1902, two weeks after he had signed a year's contract with the gas companies, the railroads changed the weight classification to 7.4 lbs. per gallon, adding thereby \$7.50 per car to the freight, while the freight on the products of crude remained unchanged. That is, the Standard could still ship gas-oil as a product of crude at the old weight of 6.4 lbs. a gallon.³⁹

Mr. Knapp protested and the railroad agents, admitting that the classification was arbitrary and not general even on their own roads, succeeded in getting the order reversed, but only for a short time, when back it went, and in reply to further protest from the Kansas agents their superior officers wrote that they were tired of the correspondence and declined to discuss the matter further. So for 11 months Mr. Knapp had to fulfil his contract with a handicap of \$7.50 per car more cost than he had figured on. The result was that in May, 1903, he turned over his crude oil to the Standard which thereafter supplied the Omaha and Kansas City gas companies, while Knapp's 20 cars were side-tracked and in the spring of 1905 were still idle at Chanute.

The weight classification killed Knapp's business, but a few small independents lived in spite of it. So another

³⁹ See Miss Tarbell's vigorous description of what the Standard did to Kansas in *McClure's* for September, 1905.

move was made on the railroad chess-board. Three great railroads tap the Kansas oil fields: the Santa Fe, the Missouri, Kansas and Texas, and the Missouri Pacific. In August, 1904, just as the Standard finished its pipe line to Kansas City, the rates on crude oil and its products were raised by all the railroads on the field. The rate to Kansas City went up from 10 cents to 17 cents a hundred; and the rate to St. Louis rose from 15 cents to 22 cents. On a carload of fifty-five thousand lbs. the increase in the freight to Kansas City was \$38.50, or \$93.50 total, and \$121 to St. Louis. This was prohibitive. In their testimony given in March last (1905), shippers, even those who were using their own tank cars, declared that the change in rates compelled them to stop business at once and shut down their wells.

The advance in freight was not a part of a general readjustment of rates. It was made alone. And it made oil rates out of all proportion to other rates. The freight from Chanute to Kansas City was \$50 for a car of wheat, \$40 for corn, \$66 for machinery, \$28 for cattle, and \$30 for a car of fruit, against \$93.50 for oil, the least valuable of all, and formerly carried for \$50 or \$55 a car.

The examiner at the recent Kansas investigation presented the following letter in explanation of the railroads: "The reason the Santa Fe and the 'Katy' railroads raised rates on oil after the pipe line was completed was because the Standard's companies arranged with them to do so, by agreeing to give them a percentage upon every barrel of oil that was run through their pipe lines on condition the railroads would increase the freight rate on oil to a prohibitive rate, so that all the oil would be forced through the pipe line. Now the railroads have no oil, but get about ten cents per barrel for all oil going through the pipe lines."

This is similar to an arrangement that existed for several years from 1884 on between the Pennsylvania Railroad and the Oil Combine by which the railroad was to have a fixed

sum per barrel on 26 percent of all the oil going eastward from the Pennsylvania oil fields, whether the oil went by rail or pipe line,⁴⁰ in consideration of which the railroad was to put up the rates on oil.

In the Kansas case there are other reasons more direct and powerful perhaps than any traffic arrangement. The Standard people have acquired a large interest in the Santa Fe. One of their strongest and most unscrupulous men, H. H. Rogers, has taken a place on the board of directors. John D. Rockefeller and Wm. Rockefeller are directors of the Missouri, Kansas and Texas, and the Missouri Pacific is one of the principal lines of the Gould-Rockefeller system. There are other indications of the grip the Standard has upon the Kansas railroads. For example, the Colorado Fuel Company that was so greatly favored by the Santa Fe is largely owned and managed by the Standard Oil crowd, and the Standard uses the Santa Fe's right of way for its pipe lines in Kansas, and for almost the entire distance from Kansas City to Whiting.

Kansas has risen in revolt against the Oil Trust, and the Legislature last year (1905) lowered the freight rates on oil and passed a bill for the establishment of a State refinery to compete with the Standard and give the oil producers of the State a chance to escape from the "commercial tyranny" they are now subjected to in consequence of the fact that there is practically only one buyer in the market. The State Supreme Court, however, has decided that the State refinery act is unconstitutional. The independents might, however, establish a co-operative refinery of their own and do a good business, if they could get equal freight rates and sufficient support from public sentiment to withstand the boycott to which the Standard would be likely to resort. Only the Standard, it is said, can get rates that encourage the shipment of oil from Kansas wells at present. And the Standard

⁴⁰ Ind. Com. vi, pp. 663-665. The seaboard pipe line was completed in 1884.

custom of putting prices very low where there is competition, keeping prices high in other regions where there is no competition, making the people in non-competitive localities pay the cost of killing competition in other places, is exceedingly effective, as is also its diabolical habit of ruining merchants who buy independent oil, by establishing competing houses close to them and underselling them on the whole line of goods they handle, the Trust's wide business enabling it to stand such losses easily, as the total is only an insignificant fraction of the profits made in regions where no such fight is in progress.

CHAPTER XXVII.

THE LONG-HAUL ANOMALY.

THE long and short haul clause is still broken by the railroads as well as by the Supreme Court, especially in the West and in the South, where the basing-point system causes such grievous discriminations. For example, with a rate of 48 cents from New York to Atlanta and a local rate of 38 cents from Atlanta to Suwanee, the rate from New York to Suwanee is 86 cents, although Suwanee is 31 miles nearer New York than Atlanta. This system is not confined to places that have water competition. A considerable number of towns on the Southern Railway and on the Louisville and Nashville have been made basing-points, though they have no water competition.¹

Jacksonville is the main basing-point in Florida, and rates to other destinations are the rate of Jacksonville plus the local rate from Jacksonville to destination, even though the destination is nearer the point of shipment than Jacksonville.²

From New Orleans to the "Virginia Cities," Richmond, Lynchburg, and Norfolk, is about 800 miles. Charlotte, at the southern border of North Carolina, is about half way. Yet the rates to Charlotte on a number of articles are double the rates to the Virginia cities, twice the distance. The Southern Railway and the Seaboard Air Line

¹ Sen. Com. 1905, p. 2322, Professor Ripley.

² *Ibid.*, p. 48. A member of the Florida State Commission says the roads also show favoritism in the supply of cars and by giving rebates to large shippers. (*Ibid.*, p. 47, R. H. Burr.)

reach the city, but there is no competition. Water competition must be met in Virginia, but if the Virginia ton-mile rate will pay a profit, is not the fourfold ton-mile rate to Charlotte an exorbitant charge? ³

Danville is an excellent example of the evils of place discrimination. Prior to 1886 Danville enjoyed equal freight rates with Lynchburg and Richmond through the competition of the Virginia Midland Railroad and the Southern Railway, but in that year the Southern road (then known as the Richmond and Danville) bought the Virginia Midland and deprived Danville of its equal rates. In 1890 Danville subscribed \$100,000 towards the construction of another competing road, which was built, but after a few years it too was purchased by the Southern Railway, and the rates were made strongly adverse to Danville. The matter went to the Commission and the courts, but the city has not been able to carry on the litigation with the roads. ⁴

The Southern Railway carried bananas in 1902-1903 from Charleston to Lynchburg for 20 cents a hundred lbs., but if the fruit stopped at Danville, part way on the road to Lynchburg, the rate was 43 cents a hundred. The road said it had to make low rates at Lynchburg to meet competing bananas coming in by way of Baltimore. The Commission found, however, that the Lynchburg rate was 13 cents lower than the rate justified by competition from Baltimore or elsewhere. ⁵ It is claimed that railroad discrimination has decreased the taxable values of Danville several hundred thousand dollars from 1900 to 1904. The Danville representative said, "I have heard a great deal about confiscatory rates, fixed by a Commission authorized to fix rates, but I have not heard anything about confiscatory rates fixed by the railroads, whereby the property of

³ Sen. Com. 1905, pp. 3339, 3340, Commissioner Fifer.

⁴ *Ibid.*, pp. 1816-1820, 3439, 3440.

⁵ 10 I. C. C. Decis. 342, June 25, 1904.

the public and of municipalities and taxable values are destroyed; but those facts exist. They exist in my town, and these facts exist in spite of the fact that the city of Danville contributed \$100,000 to the building of the Lynchburg and Danville Railroad.”⁶

The rate on canned goods from Hoopeston, Ill., to Nashville, Tenn., is 27 cents per hundred. From Hoopeston to Memphis, several hundred miles further, the rate is 19 cents. From Greenwood, Ind., to Nashville the rate is 25 cents, to New Orleans 21 cents, to Mobile 20 cents, and to Memphis 19 cents.⁷ The Chesapeake and Ohio Railway, the Norfolk and Western, and the Baltimore and Ohio, all carry lumber from the Blue Ridge Mountains. The rate from the Shenandoah Valley to Philadelphia is 16 cents per hundred, while from points in the region a hundred miles or so further west the rate is only 14 cents. “The man who is producing lumber to-day on the eastern slope of the Blue Ridge Mountains, almost within sight of us, must pay 2 cents per hundred lbs. more to get lumber to Philadelphia than the man 50 or 75 miles further west, who gets his lumber transported for 14 cents. Now, 2 cents a hundred lbs. is 40 cents a ton. That is \$12 a carload of 30,000 lbs, and that is probably about all the margin of profit there is in lumber of that kind.” All three of the railroads are controlled by one great railroad system, yet they claim that competition among them justifies the lower rate in the region where they cross.⁸

The rate on lumber from Chattanooga to Buffalo via Cincinnati is 20 cents, while from Chattanooga to Cleveland, a shorter haul over the same road, it is 23 cents.⁹

⁶ Sen. Com. 1905, p. 3441. Other witnesses agreed as to the oppressive freight rates, and said the town had subsidized two roads, both of which are now controlled by the Southern Railway, but they did not think town values had decreased or that population had diminished (pp. 2006, 2018).

⁷ *Ibid.*, pp. 1761, 1762.

⁸ *Ibid.*, p. 3294.

⁹ *Ibid.*, p. 1878.

Corn rates now (1905) are 13 cents per hundred from Omaha, 1400 miles to New York, and 25 cents from Boone, Iowa, 1252 miles to New York, 25 cents also from Dennison, Iowa, 1341 miles to New York, etc. Many similar facts might be named. And such discriminations between contiguous markets do not violate the Interstate Law. There is no requirement that one railroad line shall not charge less for a given distance than another railroad line charges, and even on the same line the long and short haul clause yields to the necessity of meeting competition.

When Dubuque wants to buy things from the South it must pay much higher rates than Milwaukee, Madison, Chicago, Freeport, etc. Manufacturers in Fort Dodge and Dubuque, Iowa, have to pay higher rates to the Pacific than manufacturers in Chicago and the East.

Iowa raises corn, cattle, and hogs, and would like to have packing-houses, but cannot because of the discrimination in favor of Chicago and Missouri River points.¹⁰ Iowa business men also say that small poultry and dressed-meat concerns cannot compete with the big packers, on account of the private-car system and the concessions granted the car-lines, and they complain vigorously of the discrimination against them in the rates on shoes, grain, cattle, iron, steel, etc. The railroads have decreed that Iowa shall not be a manufacturing State.

“THE CHAIRMAN. Why do you say that the railroads have decreed that Iowa shall not become a manufacturing State?”

“HON. A. B. CUMMINS, Governor of Iowa. I reach that conclusion simply because all our manufacturers, when they attempt to reach beyond our own State, meet rates that so discriminate against them that they cannot compete with manufacturers elsewhere.”

In many cases a shipper at an intermediate point between Minneapolis and Chicago can send his grain to Minneapolis,

¹⁰ Sen. Com. 1905, p. 2040.

rebill it to Chicago, and have it go back through his own town to destination more cheaply than he can ship direct to destination.¹¹

From Cannon Falls the rate to Chicago is 15 cents a hundred on grain. The rate from Cannon Falls to Minneapolis is 7 cents, and from Minneapolis to Chicago $7\frac{1}{2}$ cents. So it costs $\frac{1}{2}$ cent a hundred more to ship from Cannon Falls direct to Chicago than to ship to Minneapolis and from there back through Cannon Falls to Chicago. And if he wants to send his grain to Louisville, Ky., it will cost him 5 cents a hundred more to ship from Cannon Falls to Louisville, than if he sends his grain to Minneapolis and bills it from there to Louisville.¹²

Denver still suffers from the sort of discrimination described in the preceding section.¹³ The rate in cotton goods from New England to Denver is \$2.24 per hundred. From New England to San Francisco, 1500 miles further on, the rate is \$1 a hundred in carload lots. On a shipment in relation to which a Denver merchant made complaint, the Burlington road received \$25.95 from Chicago to Denver, whereas if the same shipment had been intended for Frisco the Burlington would have received only \$4.50.

Salt Lake City also is wrestling with adverse freight rates. On cotton goods the rate from New York to Frisco is \$1, while on the shorter haul from New York to Salt Lake it is just double, \$2 per hundred.¹⁴ The rate on window-shade cloth from New York to Salt Lake City is \$2.30. Carrying it 800 miles further, New York to California, the railroads charge only \$1, and this affords a slight profit. Is it not clear that the \$2.30 is excessive? ¹⁵ "The men who build a city in the interior cannot expect to get

¹¹ Sen. Com. 1905, p. 34.

¹² *Ibid.* See 10 I. C. C. Decis. 650, and Rep. 1905, p. 36.

¹³ Complaint of Denver Chamber of Commerce, Sen. Com. 1905, p. 3257.

¹⁴ Sen. Com. 1905, p. 3336.

¹⁵ Question of Mr. Fifer of Interstate Commission to Sen. Com. 1905, p. 3337.

as reasonable a rate as the men who build their city on the shore of the sea, but the difference should be a reasonable one."

It would seem that the men who build in the interior might expect that they would not be called on to pay railway fixed charges on coast traffic as well as on their own. It is unfair to give the coast people the celerity of railway traffic at the cost of water traffic. The railroad theory that every pound of freight is to be secured that will pay the cost of hauling or a little more, though a water route or a shorter rail line might carry the freight at less absolute cost, is not in accord with sound public policy or the saving of industrial power. It is an economic absurdity to haul by rail what can go more cheaply and as safely by water. A co-operative company or a consolidated company of any honest and sensible variety, owning both the railroads and the steamboat lines, would divide the traffic in such a way as to secure the maximum economy and convenience, and would make a reasonable payment for the extra speed and other advantages of railway transit the main condition of selecting that method of transportation, with an option in the company under specified conditions to facilitate the full loading of trains and boats through the adjustment of rates.

The case of Spokane is a specially aggravated one. The rate on bar iron from Chicago to Spokane is \$2.07 a hundred against \$1.25 to Seattle; iron pipe \$1 to Spokane, 50 cents to Seattle; lamps \$2.35 to Spokane, \$1.10 to Seattle; belting \$3.13 to Spokane, and \$1.65 to Seattle; mining-car wheels \$1.26 to Spokane and 85 cents to Seattle; cottons \$1.75 to Spokane, 90 cents to the coast; soap (toilet) \$1.23 to Spokane, 75 cents to coast cities; wire and wire goods \$2.35 to Spokane, \$1.50 to the coast; sewing machines \$2.25 to Spokane, \$1.40 to coast; typewriters \$5.96 to Spokane, \$3 to the cities of the coast.

In general the rates from the East to Spokane are the through rates to the coast plus the local rates from the coast back to Spokane.¹⁶

The preference which Tacoma, Seattle, etc., have over Spokane is about 80 percent. Spokane pays about \$1.80 on shipments from Chicago, while Tacoma and Seattle pay \$1.¹⁷ Spokane is a great railroad junction, but competition has been suppressed by agreement between the lines, while competition is still active at Tacoma and Seattle, so that under the decision of the Supreme Court the railroads are free to discriminate against Spokane. Aside from water competition the railroads want to build up Seattle. They have invested a great deal of money in docks and facilities for doing business there. The manufacture of wooden pipe was flourishing in Spokane. The company was shipping 2 carloads daily and its pay roll was \$3,000 a month. A rival factory in Seattle, backed by the big lumber firms of the coast, got the railways to make rates that enabled it to lay down the manufactured pipe in Spokane about 60 percent cheaper than the Spokane factory could make it. The situation came to light November, 1903, two months after the rates went into effect, when the Spokane factory came into competition with the Seattle factory for a contract at Butte. The bid of the Seattle firm was less than the pipe could be sold for at Spokane by the factory in that city, and Butte is 384 miles east of Spokane. The rates shut off the Spokane factory from the East entirely. In about 8 months that flourishing manufacture in Spokane was wiped out.¹⁸ There was no water competition here to make an excuse for discrimination, for the cut was made from Seattle east to Spokane and points still further east.

¹⁶ Sen. Com. 1905, pp. 2930, 2940.

¹⁷ *Ibid.*, p. 2914.

¹⁸ See statements of Chamber of Commerce of Spokane and testimony of its representative, Brooks Adams, Sen. Com. 1905, pp. 2917, 2928.

The paper-box manufacture was forced out of existence in Spokane by similar discriminations. Eastern factories can lay down the boxes in Spokane cheaper than the local factories can get the strawboard. So with other trades. The manufacture of sash would be rapidly developed if it were not for the grievous discrimination on window glass, \$1.38 from Pittsburg to Spokane, against 90 cents to Portland, Seattle, etc.

CHAPTER XXVIII.

OTHER PLACE DISCRIMINATIONS.

THERE are multitudes of other place discriminations besides those related to the long and short haul question. The Business Men's League of St. Louis and the St. Louis Merchants Exchange complain of serious discrimination against their city as compared with Chicago, Kansas City, Omaha, etc., in rates on corn, wheat, oats, groceries, hardware, and cotton.¹ Des Moines gets supplies from Chicago at 60 cents, while Fort Dodge, the same distance from Chicago, pays 72 cents.² Shoe manufacturers and wholesale grocers of Atlanta who have had to close down declare they were ruined by discriminative freight rates. Two years ago a prohibitive rate was put on cotton bound for Atlanta, but the freight agents of the leading railroads entering the city were indicted by the Federal grand jury and the rate was withdrawn. Mobile complains of loss of business because of discriminations in favor of New Orleans on one side and Pensacola on the other. The Fort Wayne Commercial Club complains of discrimination in rates, demurrage, switching, supply of cars, etc. The lumber rate to Boston from points in West Virginia on the Norfolk and Western is 29½ cents, while points on the B. & O. and Chesapeake and Ohio in the same State and the same distance from Boston have a rate of 23½ cents.³ The

¹ Sen. Com. 1905, pp. 2527-2529.

² Senator Dolliver, Sen. Com. 1905, p. 2094.

³ Sen. Com. 1905, p. 1870.

Pennsylvania Railroad taking lumber to points on the Long Branch Railroad made the rates by adding to the New York rate an arbitrary charge of 5 cents a hundred lbs. if the lumber came from Saginaw, Mich., but only 2 cents if the shipping point was Buffalo; held an unlawful discrimination.⁴

Even so important a city as Philadelphia has had serious complaints to make at times of the favoritism shown New York by sending many of the best trains from Washington north through Philadelphia without running into Broad Street Station, but stopping only at West Philadelphia, and by arranging excursion tickets so that southern buyers would go to New York instead of Philadelphia.⁵

In June, 1905, the New Haven and Hartford notified connecting lines that it would not receive any further shipments of coal for delivery east of the Connecticut River or north of Hartford after August 31. Such an order constitutes a compound discrimination against certain localities and a specific commodity.

The whole of New England suffers from a discrimination of about 100 percent in freight rates, the average rate in New England being about double the average for the United States. Quoting my testimony before the United States Industrial Commission: "Another phase of discrimination was brought out very prominently in our studies in New England, and the best source of information, perhaps, is the report made by the Massachusetts Railroad Commis-

⁴ 10 I. C. C. Decis. 456, Jan. 13, 1905.

⁵ See the series of broadsides on these subjects in the *Philadelphia North American* during August, 1903, and the early part of 1904. An excursion ticket from Washington to New York and return allowed 10 days in New York. Formerly a southern buyer going north on such a ticket could stop over in Philadelphia. But in 1903 this stop-over privilege was revoked, and if the buyer stopped in Philadelphia and then bought an excursion to New York he could only stay five days in New York. The result was that southern buyers began to leave Philadelphia out in the cold and merchants found that "the present tariff arrangements are working incalculable injury to wholesale houses in Philadelphia," and some of them had to open houses in New York.

sion a few years ago (1894), in which they compared the average freight rate on New England roads, individual roads, and the average of all the roads there, showing that our rates were about double the average freight rate in the Middle States, or in the Middle West, and that it was clearly double what the average freight rate was for the whole United States, and they argued with much force that it was really a discrimination against New England as a whole, especially against Boston. One of the pleas put forward in discussing the question of leasing the Boston and Albany was that the giving over of the Boston and Albany to the New York Central control would intensify instead of relieve that sectional discrimination against New England as a whole, because the road would come under the control of those interested chiefly in the development of New York City, and not in the development of Boston and the New England States.”⁶

In the Cincinnati Maximum Rate Case, involving a large number of railways and steamship lines, the Commission found discrimination between the rates from the eastern seaboard and central territory to southern points, and fixed a schedule of maximum rates from Cincinnati and Chicago to Knoxville, Chattanooga, Rome, Atlanta, Meridian, Birmingham, Anniston, and Selma, and required the railroads to revise their rates to other points in the South in conformity with the provisions of the order.⁷ On appeal to the Supreme Court it was held that the order could not be enforced against the railroads, it being the opinion of the majority of the court that the Interstate Act does not give the Commission power to fix rates, such power not being expressly conferred and being too great to be implied

⁶ Ind. Com. ix, p. 133.

⁷ 4 I. C. C. Decis. 593. The order was made May 29, 1894, on petition of the Freight Bureau of the Cincinnati Chamber of Commerce *v.* 23 railway companies, and the Chicago Freight Bureau *v.* 31 railways and 5 steamship companies. The companies refused to comply and the Circuit Court dismissed the bill for an enforcement, October, 1896, 62 Fed. Rep. 690; 76 Fed. Rep. 183.

from the prohibition of unreasonable rates and the general authority given the Commission to enforce the law,⁸ so that the discrimination the Commission sought to abolish between different sections of the country is still in operation.

Sectional discrimination, either intentional or unintentional, is bad enough, but there is a still wider and more objectionable form of discrimination as between the country and the big cities. The whole inland territory is made tributary to a few competing points.

As Hadley says: "The points where there is no competition are made to pay the fixed charges."⁹ The railroads make whatever rates are necessary to get business on the through routes, and compel the rural districts to pay rates high enough to make up for the low rates on through traffic. In many cases local rates in country districts are almost as high as they were in the old stage-coach days. Senator Dolliver suggests that every village and interior community in the United States has a grievance against the railways on account of discrimination against them in favor of the large centres.¹⁰ Every small town, and every small shipper and every farmer has to pay tribute to the big cities. The effect is to build up the cities in wealth and population at the expense of the country. For example, while Indianapolis increased by 32,389 inhabitants from 1880 to 1890, 49 counties remained stationary, and 21 counties lost. So Detroit grew greatly, while 20 counties in the State, nearly all the counties in Southern Michigan, lost population. "It is manifest that the railroads are greatly aiding the cities in drawing to themselves the best and the worst from the country, and every moment are increasing the magnitude of the municipal problem."¹¹

⁸ *I. C. C. v. Railway*, 167 U. S. 479, May, 1897, reaffirming 162 U. S. 184 and citing 145 U. S. 263, 267. Justice Harlan dissented.

⁹ "Railroad Transportation," p. 114.

¹⁰ Sen. Com. 1905, p. 844.

¹¹ *Atlantic Monthly*, vol. 73, p. 803, June, 1894.

Mr. Alexander says that the railways should have credit for decreasing the discriminations made by nature. "Thirty years ago it cost over a dollar a pound to carry from New York machinery and tools to work the mines of Utah, and the trip consumed the whole summer, during which the purchaser lost the use of his money. Now the trip requires but two weeks or less, and the rate is about two cents. Comparing these rates, and considering the character of the present service as compared with the old, it is not an exaggeration to say that the railroads have removed about ninety-nine one-hundredths of the discrimination against Utah which nature ordained in surrounding her with deserts and mountains."¹²

It is true that the railways have greatly reduced the obstacles of nature, but it is also true that they have used their power of reduction unequally, arbitrarily, and unjustly. The discriminations of nature have not the quality of justice or injustice that attaches to discrimination by human agencies. In the exercise of the function of removing the difficulties of nature the common carrier must be impartial.

¹² E. P. Alexander in "Railway Practice," p. 8.

CHAPTER XXIX.

NULLIFYING THE PROTECTIVE TARIFF.

THE railroads continue to nullify the protective tariff upon imports, and erect a counter protective tariff of their own in favor of foreign goods and against domestic manufactures, aiming to supply home markets, while on the other hand they facilitate the export of our productions by rates much lower than the charges on the same goods for the same haul when intended for domestic consumption. The effort seems to enable our producers to capture foreign markets, and to give our markets, especially the transcontinental markets, to foreign shippers. Anything to get business, long-hauls, ton-miles.

The Industrial Commission found that merchandise for export went from Chicago to New York at 80 percent of the ordinary transportation rates, and grain from Kansas City to Chicago took 3 cents a hundred lower rate if billed for export than if intended for local consumption.¹ The export rate on wheat from Chicago to New York is 15 cents, the domestic rate 20 cents; from Kansas City to Galveston the export rate is 17 cents against a domestic rate of 33½ cents.²

Another recent investigation shows that wheat from Kansas City to Galveston was paying 27 cents if for domestic use, against 10 cents if intended for export. The

¹ Ind. Com. iv, p. 194.

² 10 I. C. C. Decis. 1904, p. 58.

rates fluctuate, but if the domestic rate flies low the foreign rate flies lower still.

The price of grain in Liverpool is determined by world competition; the railroads cut rates so that our grain can be sold in Liverpool. They get a little more than the cost of hauling and are satisfied.

When oil is selling at 9 cents a gallon here it can be bought at 3 cents for shipment to Europe.

Railroads often give manufacturers a reduction of $33\frac{1}{3}$ percent for export, and manufacturers sell at 30 percent less for export. Mr. Bacon told the Senate Committee (1905) that the export rates from all inland points to the seaboard have been for years 25 to 33 percent below the rates on goods for domestic use.³

The rate on rails from Pittsburg to Hongkong via San Francisco is only 60 cents per hundred, or less than the rate between points a few hundred miles apart in this country.

"For the past two years the trunk lines have given the steel and iron producers a reduction of $33\frac{1}{3}$ percent less than the published tariff on domestic freights, so that all iron and steel exported is carried at one-third less than the people of this country are required to pay on freight of the same character."⁴

American steel has sold at Belfast for \$24 a ton, while purchasers in this country had to pay \$32 a ton at Pittsburg for the same steel.⁵ American rails sell for \$28 a ton for home use, but for foreign use they can be bought in New York for \$19 a ton and delivered in Beirut for \$22.88. Last year Mr. Wright, general manager of the Macon and Savannah Railroad, stated that his road had to pay \$29 a ton for 5,618 tons of steel rails, although the same steel

³ Sen. Com., 1905, p. 19, Bacon.

⁴ *Ibid.*, p. 19.

⁵ J. C. Wallace of the American Shipbuilding Co., June 28, 1904, to the Congressional Merchant Marine.

company offered him rails for Honduras at \$20 loaded on vessels chartered to a foreign port.⁶ During the last three or four years, while the home price has been \$28, the price for export has been \$5 to \$12 below the home price, and during the period 1902-1904 the difference has been \$8 to \$12. The Great Northern and the Northern Pacific pay \$28 a ton for rails, while their competitor, the Canadian Pacific, buys the same rails for \$20 a ton and sometimes for \$18 a ton.⁷ Even the United States Government could not get fair prices at home for the materials and supplies needed for the Panama Canal project, and found it necessary to open the competition to foreign bids. Even if it were determined to use only American goods they could be bought more cheaply abroad than at home. Matters are arranged so that goods are hauled across the ocean to Europe and then hauled back and sold here at lower prices than they could be bought for at the factory here for home use. If the railways and the steamboats and the allied interests make money they do not care how much industrial power is wasted.

An investigation last year brought out the interesting fact that the cheapest way sometimes to get goods from Chicago to San Francisco is to ship from Chicago across the Pacific Ocean and then back to California. The Interstate Commission says: "The complainant desired to ship the machinery for a stamp mill from Chicago to China. Being interested in a line of steamships between San Francisco and the East, his intention was to make shipment to San Francisco and thus to destination by his own line. Upon investigation, however, he learned that the rate from Chicago to San Francisco was \$1.25 per hundred lbs., while from Chicago to Shanghai it was 90 cents per hundred lbs. The rate at that time from Shanghai to San Francisco was 20 cents per hundred lbs. Had he desired to lay down his

⁶ See Wright's letter printed in the speech of Senator Bacon of Georgia, *Congressional Record*, April 25, 1904.

⁷ Testimony of James J. Hill before the Marine Commission.

stamp mill at San Francisco, he could have shipped it to Shanghai, and from Shanghai back for 15 cents per hundred lbs. less than the direct rate from Chicago to San Francisco.”⁸

President Tuttle of the Boston and Maine tells of a cargo of flour carried from the Pacific Coast around the Horn to England and then back to Boston to be delivered to a starch factory at Watertown. “A sailing vessel had gone to the Pacific coast with goods from Europe. There was some lack of a cargo for return. They found a lot of soft wheat flour there with which they loaded that vessel and carried it to Liverpool and put it in storage. Then the owner of the flour began to hunt around the world for a market, and found that within ten miles of Boston he could sell that flour to a starch factory at a profit and pay for the additional land haul of 10 miles.”

“THE CHAIRMAN. It first went to Liverpool?”

“MR. TUTTLE. Went from San Francisco around the Horn to Liverpool and then across the Atlantic back to Boston. In order to carry that flour to Watertown, across the continent by rail, the railroads would have had to make a rate which was practically nothing, because the transportation by water is so extremely low that you cannot put the railway rate against it and make a profit. The cost of carriage of a ton of freight by a large steamer is so low that there is hardly any way to figure it. We have to meet those conditions. That is what we are doing.”⁹

The low rates on imports enable European manufacturers to ship their goods to our western States more cheaply than our own eastern manufacturers can send their goods to the West. Rates on imports are frequently only a third of rates on domestic goods over the same lines,¹⁰ and some-

⁸ 10 I. C. C. Decis. 1904, p. 81.

⁹ Sen. Com. 1905, p. 919.

¹⁰ *Ibid.*, p. 20. Glass, for example, costs 53 cents a hundred from Boston to Chicago, while it will go all the way from Antwerp to Chicago for 40 cents, and the railroads get only a fraction of the through charge.

times the difference is greater yet. And it is not confined to manufacturers. Thousands of acres of Kaolin mines from which the finest chinaware can be made are idle in the region round Macon, Ga., because clay can be shipped from England to Ohio factories cheaper than it can go from Macon to Ohio. Several mining companies have had to quit business because of foreign competition favored by low import freight rates.

Both export and import reductions lead to serious discriminations, not merely as between our people and foreigners, but among our cities and shippers.

Unscrupulous shippers take advantage of the export rates in the domestic trade, billing their freight on the export basis. Grain, for example, is "billed for export" to Chicago or New York or other centre; and then "the destination is changed in transit," that is, after the grain or other shipment gets to Chicago or New York, the shipper stops it there, or orders it to Albany or Worcester or otherwise changes the destination.¹¹ The same thing is done in the packing-house trade to New York. The Vanderbilt traffic manager says: "Our domestic business does not amount to anything." About all the dressed beef that goes east appears to be for export. When asked how the eastern territory got its dressed beef, the manager said: "I could not give you any information on that point."¹²

Such results are worse even than the difference between the export rate on wheat and on flour, which tends to discourage the milling of wheat in this country and throw into the hands of foreign millers business that belongs to our millers. Worse than this or than the discouragement of home manufactures by cut rates on imports, is the discrimination in the export and import rates in respect to different ports.

"One of the most remarkable trade movements of recent times is the growth of the Gulf ports at the expense of New

¹¹ Ind. Com. iv, p. 194.

¹² I. C. C. Beef Hearing, Dec. 1901, pp. 106-107; see also pp. 87, 88.

York and other Atlantic ports. New Orleans has become the second largest grain-exporting port, and gives promise of becoming the first. Galveston's export and import trade is rapidly increasing. In 1897 New York handled 77.9 per cent of the wheat, corn, and flour exports, and in 1904 her share had dwindled to 36.9 percent. The Gulf ports have made corresponding or greater increases. Natural advantages, including proximity to supply centres, and the extension of port facilities for handling cargoes, have had something to do with this increase of exports from the Gulf ports, but the chief factor has been the differentials made by railroads connecting with those ports. So alarming is the decrease of commerce through the port of New York that an effort is being made to secure a legislative investigation of the subject."¹³ The Chairman of the Committee on Foreign Commerce for the Baltimore Chamber of Commerce says: "We are gradually shrivelling up because of discrimination in freight rates. Ever since December last, 1904, when the grain rates were advanced 1 to 1½ cents on export grain and 3 cents for domestic delivery, business in this city has almost come to a standstill. . . . The Gulf ports are getting it all, and while millions of bushels of corn were accustomed to arrive here, after the December marketing from the Southwest, not one has been received since the first of the year. Firms formerly engaged in the exporting business in this city have pulled up stakes and have gone to New York in search of better railroad opportunities. . . . The Chamber of Commerce here is meeting daily to devise a means of surmounting the danger which now threatens the export business of Baltimore."

The Government is forbidden to favor one port more than another, but the railroads are left free with a power of favoritism greater than any the Government possesses, and they are using the power as we have seen. Section 9, of Article 1, of the Federal Constitution says: "No preference

¹³ Sen. Com. 1905, p. 1462.

shall be given by any regulation of commerce in revenue to ports of one State over those of another."

Congress itself cannot establish any differential that would give one port of the United States an advantage over another port. But what the Constitution forbids Congress to do the railroads can do and have done, by manipulating the rates on exports and imports, thereby making business flow to whatever ports they please.

CHAPTER XXX.

SUMMARY OF METHODS AND RESULTS.

WE have dug down through the geologic epochs of discrimination, and have examined the living varieties. The predominant forms have changed, but none of the species we find among the fossils of the earlier strata have become extinct, though some of them, ticket scalping and the direct rebate for instance, are much less in evidence than formerly.

Passes¹ and other personal discriminations² still prevail, and the assortment of favoritisms in freight traffic is larger

¹ See evidence adduced in Chapter II. The words of the Industrial Commission are still true: "There seems to be a general agreement that the issue of free passes is carried to a degree which makes it a serious evil. . . . Passes are still frequently granted to the members of State and national legislatures and to public officers of many classes. . . . And stress is often laid on the opinion that the issue of passes to public officers and legislators involves an element of bribery." (Vol. iv, p. 18.)

² Salaries are paid to favored persons; stock is given to influential people; and tips on the market are given to congressmen and others whose favor may be of advantage. And the railroads act against those they dislike as vigorously as they act in favor of their friends. A curious illustration of the extent to which railways will sometimes go in their breaches of neutrality occurred in connection with the recent trip of Thomas W. Lawson in the West. During the Chatauqua exercises at Ottawa, Kansas, the Santa Fe advertised specials to run every day. The day that Lawson was to speak, however, no specials ran, and thousands of people were unable to go, as they had expected, to hear the man who was attacking Standard Oil and its allies. The specials ran as advertised every day up to "Lawson Day," and began running again the day after. The Santa Fe may not approve of Mr. Lawson's statements and in common with all other citizens it has the right to oppose him with disproof, but isn't it a little strange in this land of liberty, free

than ever. Here is a list of more than 60 forms of discrimination that are now in use, many of them constantly and others as occasion may demand: —

Passes.

Ticket brokerage.

Private passenger-coaches.

Gifts of stock.

Tips on the market.

Secret rates.

Rebates.

Elevator and compress fees.

Commissions to favored shippers as though they were agents of the company, to secure for it their own freight.

Salaries to favored persons as nominal employees, or fees for nominal services.

High salaries or commissions to real traffic agents who divide with favored shippers.

Cash contributions to shippers in the guise of payments to "encourage new industries."

Paying "transfer allowances" to some shippers for carting their own goods.

The "strawman" system.

"Expense-bill" abuses.

Loans to dealers and shippers or consignees to increase shipments or divert them from other roads.

Combination rates of which informed shippers may take advantage.

Making the published rate cover the price of the goods as well as the freight for some shippers.

Flying rates, or "midnight tariffs."

Terminal or private-railway abuses — unfair division of rates, etc.

Private-car abuses — big mileage rates, excessive icing charges, exclusive contracts, etc.

speech, and equal rights, for one of the best railroads in the country to boycott a Chataqua day because a man it does not approve of is to speak?

Similar experiences with the railroad service are reported from the Chataqua at Fairbury, Neb., when Lawson spoke there.

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Espionage, giving some shippers inside information of the business of other shippers.

Maintaining or paying for the maintenance of tracks or other property belonging to the shipper.

The long and short haul abuse.

Unjust differences in the rates accorded different places to favor certain localities, or individuals who have business interests located there.

Unduly low rates to "competitive points" in general, as compared with local rates, building the cities at the expense of the country.

Unfair classification.

Use of different classification for local and for through traffic.

Laxity of inspection in case of special shippers, enabling them to get low rates on mixed goods in carloads billed at the rate appropriate to the lowest product in the mass.

Intentional mistakes in printing tariffs, a few copies being run off for favored shippers, after which the mistakes are discovered and corrected for the ordinary shipper and the Interstate Commission.

Fictitious entries in the "prepaid" column of the freight bill.

Instructions to agents to deduct a certain percentage from the face of the bill when collecting for specified shippers.

Payment of fictitious claims for damage, delay, or overcharge.

Making a low joint rate (or single rate either) on a given commodity when shipped for a purpose confined to a few shippers, while other shippers using the same commodity for other purposes have to pay much higher rates.

False billing, —

false weight — underbilling,

false number — billing a larger number of packages than are sent and claiming pay for the difference,

false description — putting goods in a lower class than the one to which they belong,

false destination — billing for export and changing destination in transit.

Not billing at all — carrying goods free.

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Excessive difference in the rates for large and small shipments.
Unfair discrimination between shipments in different form —
barrels and tanks for example.

Charging more when the freight is loaded in one than when it
is loaded in another way practically identical so far as the
railway is concerned.

Favoritism in switching charges, demurrage, etc.

Direct overcharges, causing loss through delay and expensive
litigation, or through excessive payments.

Withholding cars.

Delay in carriage and delivery.

Refusal to deliver at a convenient place.

Difference in time allowed for unloading.

Refusing privileges accorded others, —

milling in transit,

division of rates,

credit, or payment of freight at destination,

station and track facilities,

special speed.

Selling or leasing terminal or other rights or properties to
favored shippers so as to exclude others absolutely.

Refusing shipments to or from certain persons or certain
places.

Failing to run advertised trains or taking other special action
in order to interfere with plans of an opponent, *e. g.*, to
keep people from going to mass meeting at which he is to
speak.

Unfair difference in the service accorded different places.

Cutting off part or whole of a customary service.

Side-tracking cities and towns, or depriving them entirely of
railroad facilities.

Arranging stop-overs so as to drive business to other cities.

Arbitrary routing of shipments.

Payments for routing.

Guarantee by railroad against loss upon shipments over its
line.

Unreasonable differences in the commodity rates on different
articles.

Prohibitive rates on special commodities or special shipments.

Unreasonable differences between the rates on the same goods going and coming between the same places.

Special rates on goods for export.

Special rates on imports.

Even this long list does not cover the whole field. The cases on record do not exhaust the possibilities of discriminations. The following bit of testimony shows how easy it is to invent new ways of passing railroad moneys into the treasuries of favored shippers, — ways that would not be interfered with by any law short of public control of the purchase and sale of merchandise. Mr. Gavin, the agent of the Vandalia line, was being examined by the Interstate Commerce Commission in March, 1901. On the question as to how business could be got by giving advantages to shippers without cutting rates Mr. Gavin said: "There is nothing to prevent my going down to the packing-house and paying \$10 apiece for hams if I wanted to; if I did not want to cut a rate, there is generally a way out of the hole."

"COMMISSIONER CLEMENTS. A good many ways; and it is your belief that a good many of these have been practised, is it not?

"MR. GAVIN. I do not know. I would not like to say.

"COMMISSIONER PROUTY. If you bought hams enough at \$10 apiece the packing-house could give you the traffic at full rates?

"MR. GAVIN. Yes, sir.

"COMMISSIONER PROUTY. Have you ever known that to be done?

"MR. GAVIN. No, sir; but I say there are lots of ways out of the woods."

Almost everybody agrees, in public, that railway favoritism ought to be stopped.³ It disturbs the fair distribution

³ Mr. Appleton Morgan, writing in the *Popular Science Monthly* for March, 1887, said (p. 588): "Rebates and discriminations are neither peculiar to railways nor dangerous to the 'republic.' They are as necessary and as

of wealth, undermines industrial justice, business morals, and political honesty; builds monopoly; wastes resources, and causes enormous loss to the railroads as well as to the persons and places that are discriminated against.

Railway discrimination breaks down the equality of opportunity that is one of the fundamental rights recognized in every country. It tends to separate success from merit and industry, and make it depend on fraud and favoritism. Judge Grosscup touched a vital point when he said to the Boston Economic Club, March 11, 1905: "Any difference in rates permitted by law, even though

harmless to the former as is the chromo which the seamstress or the shop-girl gets with her quarter-pound of tea from the small tea-merchant, and no more dangerous to the latter than are the aforesaid chromos to the small recipients."

General Manager Van Etten of the B. & A. says discrimination is the American principle. You find it everywhere. You buy goods at wholesale much cheaper than you can get them at retail. It is the same with gas and water and electric light.

A number of railroad men take the view that "railroad service" is a commodity to be sold like any other sort of private property at whatever price the owner can get or chooses to take.

The trouble with these statements (aside from the quantity plea which may be allowed within reasonable limits) is that the differences between railway service and ordinary mercantile service are not taken into account.

If people found they were unfairly treated by the bakeries or groceries or shoe stores of a town, it would be easy to establish a new store co-operatively or otherwise, that would be fair and reasonable, and that possibility keeps the store fair as a rule even where there is no direct competition. But when the railways do not deal justly with the people of a town they cannot build a new road to Chicago or San Francisco. It is the monopoly element, together with the vital and all-pervading influence of transportation, that differentiates the railroad service from any ordinary sort of commerce. If bread stores or shoe stores combined, and, by means of control of raw material or transportation facilities, erected a practical monopoly or group of monopolies, and favoritism were shown in the sale of goods by means of which those who were favored by the monopolists got all the chromos and low rates, and grew prosperous and fat, while those who were not favored went chromoless and grew thin in body and emaciated in purse, it is not improbable that the President would write a message on the bread question and the leather question, and a Senate committee would be considering legislation to alleviate the worst evils of the bread and shoe monopolies without stopping the game entirely.

based on the bulk of the tonnage handled, is a direct and effective blow, by the nation itself, at the principle that every man, whatever his present business size, shall be given equal conditions and equal opportunity. . . . In this country there is no such thing as size to a business man. The man of little size expects to get big. He has a right to get big. He has a right to have the atmosphere of equal opportunity and equal conditions in which to grow, and excepting, of course, some unit, such as a ton or a car, the charge ought to be the same for the little as for the big shipper.”⁴

The railways are public highways, they exercise governmental powers and fulfil governmental functions, and it is an atrocious misuse of social power to employ these so as to give special advantages to a few members of the community. The Interstate Commission says: “The railroad is justly regarded as a public facility which every person may enjoy at pleasure, a common right to which all are admitted and from which none can be excluded. The essence of this right is equality, and its enjoyment can be complete only when it is secured on like conditions by all who desire its benefits. The railroad exists by virtue of authority proceeding from the State, and thus differs in its essential nature from every form of private enterprise. The carrier is invested with extraordinary powers which are delegated by the sovereign, and thereby performs a governmental function. The favoritism, partiality, and exactions which the law was designed to prevent resulted in

⁴ In their established tariffs our railroads do apply the same rates per hundred whether the goods moved in carloads or train-loads. The Commission has held that the law requires this, and Commissioner Prouty says that the open adoption of any different rule would create an insurrection that Congress would hear from from all parts of the country; but he thinks that in certain cases, live-stock and perishable fruit for example, the railroads should have a right to make lower rates by the train-load than by the carload. In reference to cost of service there is ground for such a difference, but on grounds of public policy is it not a mistake to favor the giant shipper in this way and so help the building of trusts and monopolies?

large measure from a general misapprehension of the nature of transportation, and its vital relation to commercial and industrial progress. So far from being a private possession, it differs from every species of property, and is in no sense a commodity. Its office is peculiar, for it is essentially public. The railroad, therefore, can rightfully do nothing which the State itself might not do if it performed this public service through its own agents, instead of delegating it to corporations which it has created. The large shipper is entitled to no advantage over his smaller rival in respect to rates or accommodations, for the compensation exacted in every case should be measured by the same standard. To allow any exceptions to this fundamental rule is to subvert the principle upon which free institutions depend, and substitute arbitrary caprice for equality of right.”⁵

The losses to the railroads cannot be estimated accurately, but we have some interesting hints. Franklin B. Gowan said in 1888: “The gross receipts of the railroads of this country, in round numbers, are eight hundred millions of dollars per annum, and I verily and honestly believe that one hundred millions of dollars annually are taken out of the pockets of the people of this country by unjust railway discrimination, and turned over to this privileged class—and this is equal to a tax of two dollars per head paid by the people for the sake of building up the new aristocracy of wealth that in this free country arrogate to themselves the position of the nobility of the older countries. It is utterly impossible that there can be any success attending a monopoly of natural products without the aid of the unjust discrimination of railroad companies. And only when such discrimination ceases will all people be placed on terms of equality.”

If the losses were more than \$100,000,000 a year when the total income of the railroads was \$800,000,000 a year, the losses now with an income of about \$2,000,000,000 a

⁵ Sixth Annual Report, Interstate Commerce Commission, p. 7.

year are probably, at least, \$200,000,000 a year, allowing for all the saving that is claimed to have resulted from the Elkins Act. A railroad officer who says his road has constantly disregarded the Interstate Commerce Law declares that in more than one year the net revenues of his company "would have been increased by more than 15 percent if no rebates had been paid to favored customers." The hundreds of millions which the transportation systems of this country have, during the period from 1887 to 1905, earned and repaid to the men who controlled the large industrial products of the country — coal, iron, grain, salt, sugar, oil, provisions, and lumber — belonged equitably to employees and stockholders (or to the people). "And the history of this period may be repeated as often as the whim or the interest of a traffic manager or owning director prompts or requires."⁶

The losses through the disturbance of business, interference with the relation between energy and industry on one side and success on the other, depression of localities, and ruin of individuals, are beyond computation.

Most shippers would be glad to do away with discrimination if they could be sure that there would be a square deal all round, fair play, and no concessions to their rivals. And most railroad men would be glad to be protected against the discriminations that are forced upon them by the shippers, and by competition among the roads, if they could be sure that the published rates would really be adhered to by their competitors.

Law after law has been passed to prevent unjust discriminations, and yet in spite of the contrary statements of some witnesses,⁷ it is perfectly clear that they have

⁶ *Outlook*, July 1, 1905, p. 577.

⁷ We have seen earlier in this chapter that a number of railroad men and others told the Senate Committee that they believed rebates and discriminations to have ceased. In his excellent book, "The Strategy of Great Railroads," Mr. Spearman says: "Alexander J. Cassatt has made unjust discrimination in railroad traffic a thing of the past." Sometimes we are assured: "There can

not ceased, and that comparatively little has been done in that direction.

Railroad men in high position declare that discriminations always will exist. President Ripley of the Santa Fe says: "The situation is practically remediless. I think it will always be."⁸ President J. J. Hill of the Great Northern says: "You may say there shall be no discrimination. But that condition will never exist. If there were no discrimination the people would come down here in great throngs and ask you to authorize discrimination. We have to discriminate."⁹ When I asked President Fish of the Illinois Central how discriminations could be stopped he said: "Tell me how to enforce the Ten Commandments and I'll tell you how to stop discriminations." Another railroad president, whose name I am not at liberty to give, said in reply to the same question: "Discriminations will never cease so long as there is competition among the railroads, or political favors and protection can be secured thereby, or railways and railway men are interested in other businesses than transportation." President Hill also recognizes the factor of special self-interest in addition to the influence of competition. He says: "I think that every railway officer in this country should be disqualified from having any interest, directly or indirectly, in any large producer of traffic, whether it is a coal mine or a factory or a mill or anything else, on a line of railway where he is on the pay roll."

be no doubt but that, on the whole, the freight rates of the country have been adjusted in very nearly the best way possible for the upbuilding of the country's commerce." (See "Freight Rates that were made by the Railroads," W. D. Taylor, *Review of Reviews*, July, 1905, p. 73.) For one who has in mind the facts brought out in this book, comment on these statements is hardly necessary. There is no doubt that President Cassatt is a railroad commander of exceptional power, but he has not vanquished the smokeless rebate, nor driven the hosts of unjust discrimination from the railroads of the United States.

⁸ Ind. Com. Q. & Ans. iv, p. 596.

⁹ Sen. Com. 1905, p. 1474.

"SENATOR CLAPP. And the reason for that suggestion is what?

"MR. HILL. That he cannot be fair to the other fellow and punish himself.

"SENATOR CLAPP. And the opportunity is such that it cannot be detected and prevented?

"MR. HILL. It is so easy, if there is a great demand for coal in one direction, or for some commodity in one place, for him to help one fellow and forget the other."¹⁰

One of the gravest dangers lies in the fact that men who are largely interested in the great industrial corporations control certain railway lines and have large influence with many others. The interlocking of railroad interests with other industrial interests is a cause of discrimination second only to the pressure of railroad competition for traffic that is used by shippers as a means of extorting the favors they desire.

A railroad executive writing in *The Outlook* for July 1, 1905 says: "Notwithstanding the violations of the Interstate Commerce Law have been open and notorious, and indictments have been numerous and prosecutions not infrequent, no railroad officer has ever been incarcerated. For my own part, the penal liability for such disobedience has never in any wise deterred my purpose to secure my company's share of tonnage by whatever means competitors employed. I have the reputation of a law-abiding citizen in my home city — am well known — of good personal character. I flatter myself that a jury could not be found which would commit me as a felon because I

¹⁰ Sen. Com. 1905, p. 1521. The Texas Railway Commission says: "It is plain that, if a railway company is permitted to become interested in any kind of business competitive with business in the carrying on of which for others it is engaged, the business in which it is interested can be made to prosper at the expense of the business in which it has no interest. The temptation to unfair discrimination in such a case is so powerful that it ought to be removed." (Report, 1896, p. 29.)

directed the payment of a rebate to a shipper—a transaction which did not inure to my financial advantage. Could a jury be found that would exact a felon's punishment for such men as Mr. Stuyvesant Fish, or Mr. Secretary Paul Morton, or Mr. Marvin Hughitt for disobeying a statute in order that the revenues of the company by which he was employed might not be decimated?" He had previously said that the revenues of the railroads have been decimated by hundreds of millions through the granting of discriminations, but he argues that the revenues of any particular railroad that should refuse concessions would be decimated still more largely. The truth of this contention is strongly illustrated by the following incident. Some years ago Judge Taft (now Secretary of War), as receiver for the "Cloverleaf" Railroad from Toledo to St. Louis, appointed Mr. Samuel Hunt of Cincinnati, a well-known and successful railroad manager, and required him to comply strictly with the Interstate Law. In doing this Mr. Hunt was obliged "to disregard many outstanding rebate obligations of his predecessor in the receivership, thereby giving offence to many patrons of the road and their friends, the result of which was a decrease of the gross earnings of the road within twenty months of more than \$340,000." The sacrifice of hundreds of thousands of dollars, the loss of the good-will of shippers, the harsh criticism of competitors, and broken health were the results of Mr. Hunt's earnest efforts to obey the law. M. E. Ingalls, President of the Big Four, said a few years ago to a convention of State railroad commissioners: "Men managing large corporations, who would trust their opponent with their pocket-book with untold thousands in it will hardly trust his agreement for the maintenance of tariffs while they are in the room together.

"The railway official who desires to be honest sees traffic leave his line.

"The result is these men in despair are driven to do just what their opponents are doing. They become law-breakers themselves.

"No one is going to try and send his competitor to prison. Besides, there is the fear that he himself may have committed transgressions which in turn will be discovered and punishment inflicted upon himself.

"Unless some change is made, the small shippers of the country will be extinguished, and a few men of large capital will control the entire merchandise business. And railways . . . will be seized upon by large capitalists and combined into one monstrous company."

CHAPTER XXXI.

DIFFICULTIES OF ABOLISHING DISCRIMINATION.

It is difficult to enforce the law against discrimination, because of the strong interests that call for it, the secrecy of many of its forms, the reluctance of shippers to make complaints for fear of persecution, and the resistance offered by railway officers to efforts to get at the facts, leaving the country during an investigation, refusing to answer truthfully on the witness stand, burning books and papers that might reveal the facts to courts or other investigating bodies or enable the officers to refresh their memories so as to be able to answer questions.

Often there are no records of the concessions granted favored shippers except the memoranda in the personal note-books of the traffic managers. Rebates or commissions are frequently paid by messenger boys sent from the general freight office, or treasurer's office, with the currency and a slip of paper with some pencil marks on it, instead of sending a check and obtaining a voucher.¹ The officers forget about the transaction as soon as possible, — sooner than possible it seems sometimes, — or in some other way try to prevent the Commission from getting the facts with sufficient detail to bring suits. For example, in the "Dressed-meat" Hearing at Kansas City, March 21, 1901, fifteen transportation men were subpoenaed and examined without securing any important facts. The witnesses, who occupied positions which would naturally

¹ Sen. Com. 1905, p. 17.

lead one to suppose they would know all about the matters in hand, manifested the most persistent and remarkable ignorance, and the Commission had to go to Chicago and try again before it got any light on the packing-house transportation question.

In March, 1898, the Interstate Commission investigated rebates on flour from St. Paul, Minneapolis, and Duluth to Atlantic seaports. The Commission had information of wide departures from the published tariff. It says: "The inquiry was greatly hampered by the disappearance of material witnesses before subpoenas for their attendance could be served, the inability of several who did testify to recall transactions there of recent date, and the evident reluctance of others to disclose any information bearing on the subject involved. All of the railway witnesses denied knowledge of any violation of the statute, and most of the accounting officers testified to the effect that if rebates had been paid they would necessarily know about them, and that their accounts did not show any such payments. It was nevertheless fully established by the investigation that secret concessions had been generally granted on this traffic, and that the carriers had allowed larger rebates to some shippers than to others."²

After the St. Paul investigation in 1898 the Commission entered on an investigation at Portland, Ore., in respect to rates between the coast and points on and east of the Missouri River. "It was established by the proof that secret rates generally prevailed at Portland and common points, and that transportation was, in effect, sold to the lowest bidder. The lawful rates were ignored, except as they might serve as a standard in making agreements for lower charges. . . . Some of the merchants conformed to the law, but in so doing they were at a disadvantage in competing with those who disregarded the statute; and in many instances this disadvantage represented more than

² I. C. C. Rep. 1898, p. 6.

a fair profit upon the commodities involved. Most of the merchants who admitted that they had thus violated the law declared themselves unable to remember who paid them the rebates, or when or upon what shipments any illegal rate concessions had been made. Some testified that they had kept account of the unlawful transactions, but that when they heard of this investigation they destroyed their memoranda in order to defeat prosecutions on account of their illegal acts. They insisted that without these data they could give no specific testimony concerning any of the transactions.”³

The Commission found in these and other investigations that “unlawful rebates have been and are being paid by a great number of carriers,” but they could not get the specific evidence necessary for prosecutions.⁴

In its Report for 1904, p. 104, the Commission says: “Railroad officials often seem to think that it is their duty to withhold facts, on account of some real or supposed liability to make disclosures that will impair the railroad’s rights or interests in future judicial proceedings. Some companies seem to have adopted a settled policy to give the least possible information, at all times, on any and all subjects.”

Discussing the continuance of the payment of rebates and the reasons the Interstate Commission has not been able to stop the practice, Commissioner Prouty says:⁵

³ I. C. C. Rep. 1898, p. 8.

⁴ On pages 65 and 66 of the last Report, Dec. 1905, the Commission discusses a decision of the Circuit Court for the Southern District of New York, in June last, to the effect that a *subpœna duces tecum*, commanding the secretary and treasurer of a corporation supposed to have violated the law to testify before the grand jury, and bring numerous agreements, letters, telegrams, etc.,—practically all the correspondence and documents of the company originating since the date of its origin,—to enable the district attorney to ascertain whether evidence of the alleged breach of law exists, constitutes an unreasonable search and seizure of papers prohibited by the Fourth Amendment to the Constitution.

⁵ Sen. Com. 1905, pp. 2899–2901, 2911.

"When I first came onto the Interstate Commerce Commission (1897), I used to see continually in the newspapers statements like these: 'Rates sadly demoralized,' 'agreement between railroad officers to restore rates,' and everything of that sort. I said to my associates, 'Gentlemen, this thing will not do; we must stop the payment of rebates.' They said, 'How are you going to stop the payment of the rebates?' I said, 'We are going to call these gentlemen before us; we are going to put them under oath, and we are going to make them admit they paid these rebates, and we are going to use the evidence which we obtain to convict them.' We employed Mr. Day, who is now with the Department of Justice. The rates which have been almost uniformly demoralized have been the grain rates from Chicago to the Atlantic seaboard. We called in the chief traffic officials of all these lines and we put them under oath. Now, I would ask these gentlemen, 'Are you the chief traffic official of this road?' 'I am.' 'Would you know it if a rebate was paid?' 'I would.' 'Are any rebates paid on your road?' 'There are none.' 'The rates are absolutely maintained?' 'They are.'

"Well, every traffic official who came before us in that capacity — and we prosecuted it for three days at Chicago — testified that rates were absolutely maintained."

"SENATOR NEWLANDS. How many did you have before you?"

"MR. PROUTY. We had the official of every trunk line leading from Chicago to New York. They all testified the rates were absolutely maintained from Chicago to New York. Two years after that I examined the chief traffic officer of the Baltimore and Ohio, and of the New York Central — do not think it was the same man in either case — and of the other lines, and they all testified that rates had never been maintained. I would like to know what I could do as Interstate Commerce Commissioner to make those gentlemen admit that they paid

rebates, and as they would not tell that they paid rebates, I would be glad to know how I could obtain evidence that they did.

“Having gotten through, Senator, with the lines between Chicago and New York, we said perhaps this is not a fair sample. Now, we will go up in the Northwest, and we will take the lines that carry flour from Minneapolis east. We instituted another investigation, and we put the railroad and the traffic men of the millers on the stand, and they all swore without exception that the rates were absolutely maintained. One traffic official there, when it got a little bit too hot for him, became sick enough so that he threw up his dinner, but he did not throw up the truth. We could not get the admission from any man there that they had ever paid a rebate. We said, ‘This does for the East; now let us go West.’ So we went into the Pacific Coast, to Portland, Oregon, and went over exactly the same performance there. We made one man admit that he burned up his books rather than present them to the Commission, but we could obtain no admission of the payment of any rebate there.”

But the St. Louis Southwestern Traffic Committee or Traffic Association employed a young man by the name of Camden and instructed him to lay before the Interstate Commission any evidence he got of the payment of rebates. “He had not been there more than two or three weeks before he found some evidence to the effect that the Baltimore and Ohio Railroad had been departing from the published rate, and he came up to Washington and laid that evidence before the Interstate Commerce Commission, and we began proceedings against the Baltimore and Ohio Railroad. That was the first instance from the time I came onto the Commission that we could obtain any evidence of a departure from the published rate. We directed the Baltimore and Ohio road to file a statement showing what shipments they had made during a certain

time, and the rate of freight paid them for the transportation. Thereupon they filed a statement showing a great many departures from the published rate. At the same time they sent to the Interstate Commerce Commission a letter. They said in that letter in substance, that the roads in the territory in which they operated had habitually departed from the published rate; that was after they had sworn they maintained the published rate in that territory: 'Now, for us, the receivers of the Baltimore and Ohio, we have gotten through, but we cannot maintain the rate unless our competitors maintain the rate. We propose from this time on to maintain the rate ourselves, and we propose to see that they maintain it; but in order that we may do that, we ask you to call a conference of the railroad presidents in trunk-line territory.'

"Now the Commission did, acting on that suggestion, invite every president of the trunk-line railroads to come to Washington. They came, all of them. Mr. Calloway was there for the New York Central; Mr. Thompson was there for the Pennsylvania Railroad; Mr. Murray and Mr. Cowan came there for the Baltimore and Ohio; Mr. Harris came from the Philadelphia and Reading, and Mr. Walters was there for the Lehigh Valley. I do not remember them all, but they all came there. Those gentlemen all said: 'It is true; we have departed from the published rate. We did not like to do it, but we did. But we have gotten through. We shall depart from the published rate no more. If you gentlemen will only let bygones be bygones, we assure you that in the future there will be no discrimination under this law.'

"Well, I expect, perhaps, that we ought to have said to them, 'You are a pack of consummate liars; we do not believe anything you say, and we will prosecute you if we can. But we did not think so; we believed exactly what they said, and we told them we did, and they went home, and no prosecutions were begun on the facts which we had

against the Baltimore and Ohio. Then we called, at the request of certain persons in the West, the presidents of all those lines, and they all came. Mr. Marvin Hughitt came; Mr. Bird, of the Milwaukee line, came; in all, 30 or 40; and we had the same sort of an experience meeting again. They all said: 'We have sinned, but we have got through. Now, gentlemen, just help us to maintain the Act to regulate commerce.' We said: 'We will do it.' And they went home.

"Now, I do not wish to pass any criticism at all on these gentlemen. I have not the slightest doubt that they meant precisely what they said. I think I know something about the difficulties under which they labored; but they did not maintain those rates for a month, probably. . . . There has not been a time since I have been an Interstate Commerce Commissioner, when, if the traffic officers of the trunk lines between Chicago and the Atlantic seaboard would have consented to tell the truth under oath, the Interstate Commerce Commission would not have stopped the payment of rebates. I have been able to discover no way in which to make them tell the truth."

"SENATOR NEWLANDS. In regard to the future, will it not be possible for them to commence again this system of rebates?"

"MR. PROUTY. I think they pay rebates now.

"SENATOR NEWLANDS. You think they do?"

"MR. PROUTY. I think they do."

Victor Morawetz, Chairman of the Executive Committee of the Santa Fe, was asked if it would not be wise to require the traffic manager of each railroad, the auditor, and the president, to report every three months on all existing contracts, and that there had been no violations of law, no abuses, so far as they knew, and that they had made diligent inquiry to ascertain if there had been. Morawetz replied that if such a law were passed some men would perjure themselves every three months, and others

who were thoroughly honest would simply not take office.⁶

Not all the railway officers refuse to tell the truth. There is every reason to believe that Paul Morton and Mr. Biddle of the Santa Fe, for example, spoke the truth in their testimony before the Commission. But the evidence seems to be that the habit of truth telling is not very prevalent. And when the railroad officers determine to prevent publicity either by falsehood or by silence they take care to eliminate documentary evidence that might be used to checkmate them. They destroy their records so that they will be less liable to know anything about the rebates they have paid, and to make it as hard as possible for the Interstate Commerce Commission to get at the facts.

The Commission is examining Mr. McCabe, freight traffic manager of the Pennsylvania lines west of Pittsburg.

"COMMISSIONER CLEMENTS. Are you in the habit of destroying records not a year old?

"MR. McCABE. Sometimes.

"COMMISSIONER CLEMENTS. But generally?

"MR. McCABE. If they are not essential or it is not important that they should be kept.

"COMMISSIONER CLEMENTS. What would be the particular reason for destroying these papers and records?

"MR. McCABE. Possibly because we thought you might want them laid before you sometime.

"COMMISSIONER CLEMENTS. You destroyed the evidence of the illegal transaction?

"MR. McCABE. Yes, sir, that is right."⁷

The general traffic manager of the Michigan Central said that papers relating to refunds, etc., "were destroyed because their usefulness for our purposes had gone and passed."

⁶ Sen. Com. 1905, p. 829.

⁷ I. C. C. Beef Hearing, Dec. 1901, pp. 100, 101.

“COMMISSIONER CLEMENTS. Do you destroy your other papers as recent as these?”

“MR. MITCHELL. Not as a rule, sir.

“COMMISSIONER CLEMENTS. Well, I will ask you again if you destroy these papers in order to destroy the evidence of the transactions to which they relate?”

“MR. MITCHELL. Certainly we should dislike very much to have those papers exposed to the general public.

“COMMISSIONER CLEMENTS. Why?”

“MR. MITCHELL. It would be an unwise thing from a railroad standpoint to have such matters going about.

“COMMISSIONER CLEMENTS. Why would it be unwise to disclose the method of procedure?”

“MR. MITCHELL. Well, on account of the Interstate Law.

“COMMISSIONER CLEMENTS. Because it violates the law, yes. That is what you really mean, is it not?”

“MR. MITCHELL. I suppose that is it, sir.”⁸

The Rock Island freight traffic manager also testified to the destruction of papers showing rebates or concessions.

“COMMISSIONER CLEMENTS. Why are they destroyed?”

“MR. JOHNSON. Simply for the purpose of destroying any evidence there may be.

“COMMISSIONER CLEMENTS. All the papers you know about or entries that you are familiar with are destroyed?”

“MR. JOHNSON. I understand they are all destroyed.

“COMMISSIONER CLEMENTS. Have you any recent ones?”

“MR. JOHNSON. I do not think they are more than thirty days old.

“COMMISSIONER CLEMENTS. You think that all up to within thirty days are destroyed?”

“MR. JOHNSON. That is the rule or custom.”⁹

⁸ I. C. C. Beef Hearing, Dec. 1901, pp. 114–115.

⁹ *Ibid.*, p. 126.

The shippers who receive rebates, etc., adopt similar measures to keep their modest affairs from the public. In April, 1904, the newspapers reported that the Interstate Commerce Commission was going to Boston to investigate rebates and private car-line abuses. The office force of the Armour office at Boston was immediately set to work packing into barrels all letters and records that might show a combination or understanding among the houses or with the railroads, or other inconvenient matters, and all these dangerous documents were incontinently fed to the furnaces.

On the other hand, shippers who are not of the favored class are afraid to complain for fear of persecution by delay of freight, overcharges, prolonged litigation of every difference or dispute, and probable intensification in some form of the discrimination in favor of their competitors. The Oregon Commission says: "The shipper preferred to tamely submit to the injustice put upon him through discriminations against him or unreasonable and extortionate charges and exactions for transportation facilities, than to hazard the utter ruin of his business by provoking the animosities of managers if he carried his grievances into the courts in order to have his rights determined and enforced. . . . Besides, if the shipper went to court with his grievances he was confronted by powerful and wealthy corporations who contested, with the aid of the ablest counsel money could procure, every inch of the ground in the controversy, thus making each contest between the individual shipper and these corporations an unequal one in proportion to the ability of the shipper personally to press his case as compared with the financial ability of the corporations."¹⁰ In a large majority of cases the loss sustained by the individual through favoritism or extortion is less than the probable injury resulting from litigation with

¹⁰ Report of Oregon Railway Commission, 1889, p. 32.

powerful corporations employing the ablest counsel, contesting every inch of ground, defeating or delaying redress by every possible means, and squeezing the plaintiff meanwhile perhaps with a grip upon his business that means death to his prosperity, so that the shipper thinks it better to bear the ills he has than fly to others to which he has not been introduced.

CHAPTER XXXII.

REMEDIES.

COMING now to consider how railway favoritism may be abolished, we find a wide divergence among railroad men, law-makers, and other authorities. Some say that discriminations cannot be stopped,¹ others declare that they have been stopped,² others that present laws are ample and all that is needed is their enforcement,³ while others state that present remedies are insufficient,⁴ and suggest further

¹ See above, p. 237.

² See above, p. 113.

³ "There is ample law to-day" to stop rebates and unjust discriminations, says President Tuttle of the Boston and Maine (Sen. Com. 1905, p. 951), and he backs up his statement with vigorous reasons for believing that the Government has never earnestly enforced existing laws. President Ramsey of the Wabash also says that the present law is ample to cover every unjust charge, and no further legislation is needed to stop discrimination (Same, p. 1959).

George R. Peck, general counsel for the Chicago, Milwaukee & St. Paul, testified that "existing law is entirely adequate" (Same, p. 1301).

Mr. Robbins, manager of the Armour Car-Lines and director in Armour & Co., declares that the "Elkins Law is ample" (Same, p. 2387). See also p. 2117, James J. Hill; pp. 2179, 2181, Carle; p. 2228, Grinnell; p. 3068, Faxon; pp. 3274, 3276, 3285, 3290, Elliott; p. 2360, Woodworth; p. 2829, Smith.

⁴ A number of witnesses declare that the delays and uncertainties and inadequacies of redress under existing laws discourage shippers from efforts to obtain relief. Mr. C. W. Robinson, representing the New Orleans Board of Trade and the Central Yellow Pine Association, says they had such bad luck with their lumber cases before the United States courts that they are discouraged.

"Don't you think that the question of rebates and discriminations is already covered by law and can be stopped by summary proceedings?"

"MR. ROBINSON. That they are not stopped is patent to every one who uses a railway company as a shipper and who keeps his eyes open.

legislation making the long and short haul clause binding except so far as relief is granted by order of the Interstate Commission;⁵ extending the power of the Commission to private car-lines, fast freight and express companies, and water carriers;⁶ giving it, or a national court, authority to fix reasonable rates in place of those which upon complaint and investigation it finds unreasonable,⁷ and to declare that a rate resulting from any rebate or concession to favored shippers shall be open to all shippers;⁸ specifically enacting that the payments for private cars and for switching shall not be greater than similar payments made by the railroads to each other;⁹ legalizing combination and

“ ‘Has there been any suit brought within the last two or three years for rebates and discriminations in this section of the country?’ ”

“MR. ROBINSON. No; generally speaking, we have decided down there that life is too short to litigate with the railroad companies” (Sen. Com. 1905, p. 2492).

Governor Cummins of Iowa says that no suits have been brought in Iowa for discrimination under the Elkins Law because the remedy under that law is regarded as inadequate (Sen. Com. p. 2081). It appears that only one case, the Wichita sugar differential, is before the I. C. C. under the Elkins Law (Sen. Com. p. 2874).

⁵ Fifer, Adams, etc., Sen. Com. pp. 2923, 3338.

⁶ Vining, Sen. Com. p. 1691, Knapp, p. 3294, etc. Robbins, however, manager of the Armour Car-Lines, says they are opposed to being made common carriers (pp. 2384, 2397, 2400). He says they do not indulge in rebates, generally speaking (pp. 2382, 2387, 2403), and thinks they would be worse off if put under the Interstate Law (pp. 2390, 2397, 2401).

⁷ President Roosevelt, Governor La Follette, Governor Cummins, Sen. Com. p. 2046; Professor Ripley, pp. 2330, 2338; Commissioner Knapp, p. 3305, Commissioner Prouty, pp. 2794, 2873, 2881, and 2886, where he says: “I do not think the Commission has to-day in its docket a case that can be satisfactorily disposed of without determining the rate for the future.” Commissioner Clements, p. 3243, Commissioner Fifer, pp. 3344, 3350, and many other witnesses; also writers and speakers throughout the country.

On the other hand, James J. Hill, President of the Great Northern, says he cannot imagine a greater misfortune than to attempt to fix rates by law, p. 1486; it would hamper transportation and hinder development. President Tuttle says that rate-making is practically the only property right the railways have, p. 913. Railway men generally are strongly opposed to fixing rates by commissions.

⁸ Sen. Com. p. 3482, N. Y. Chamber of Commerce.

⁹ Several witnesses suggest this. See, for example, Sen. Com. p. 3280.

pooling;¹⁰ forbidding railroad men to have any interest in any large producer of traffic on their lines;¹¹ requiring roads to make through routes and through rates with all connecting lines;¹² protecting our railroads against the competition of Canadian roads; providing for the public inspection of railroad books and accounts;¹³ requiring that all railroad monies shall be received and paid out by Government officers;¹⁴ or otherwise securing direct representation of the public in the management;¹⁵ and establishing a sliding scale of taxation to apply in inverse ratio to the fairness and openness of the railway administration, so that a railroad opening its books freely to inspection and treating all fairly and impartially would pay low taxes, while a railroad acting on opposite principles would be taxed at a high rate.¹⁶ The enactment of the Commerce Act by all the States and territories so that the State and Federal laws may be in harmony, and State and national commissions can co-operate in shutting out discrimination from local and through traffic,¹⁷ is also suggested. Another view is that only pub-

But James J. Hill says that if present laws were enforced not one of the car-lines could exist a moment, p. 1486.

¹⁰ Professor Ripley, p. 2345, Fordyce, p. 2202, and many railroad men; see below, p. 265. But see p. 61, Cowan; p. 822, Victor Morawetz; pp. 973 and 1003, President Tuttle.

¹¹ James J. Hill, p. 1521.

¹² Knapp, p. 3299; without such a provision the old roads can cripple a new road unless it goes clear across the continent.

¹³ Morawetz, pp. 818, 824; Bacon, pp. 16, 23; Davies, p. 3470; and Report of Industrial Commission. Publicity is an excellent aid, but is insufficient alone. It must keep steady company with adequate legislation and efficient enforcement of it. What has been the effect of publicity on the Standard Oil Trust up to date?

¹⁴ Commissioner Prouty, p. 2912. "That would stop discriminations," said the Commissioner. "Unless they got possession of the man," said Senator Dolliver.

¹⁵ Judge Gaynor proposes that the traffic managers shall be appointed by the Government. The present writer has suggested that the public might be represented on the board of direction in consideration of the franchises, etc.

¹⁶ *Arena*, vol. 24, p. 569, Parsons.

¹⁷ Many of the States have strong laws, but the inharmonious, unco-ordinated efforts of individual States have proved of little avail against the

lie ownership of the railroads under thorough civil service regulations can eliminate either the motives or the power to discriminate, — the antagonism of public and private interests being the tap-root of discrimination, it can be fully overcome only by pulling up the root and making railroad managers the agents of the public to run the roads for the public service instead of being the agents of private interests to operate the roads for private profit.

giant railway systems. Of the 31 States which have established railway commissions, 22 have given the commissions more or less of the rate-making power. For example, the Alabama Code, 1886, gives the Commission authority "to revise the tariffs and increase or reduce any of the rates." The California Constitution, 1880, confers power "to establish rates;" Florida Laws, 1887, "to make and fix reasonable and just rates;" Georgia Code, 1882, "to make reasonable and just rates;" Illinois Laws, 1878, "to make for each railway a schedule of reasonable maximum rates;" Iowa, 1888, and South Carolina, 1888, the same as Illinois; Minnesota, 1887, power "to compel railways to adopt such rates and classification as the Commission declares to be equal and reasonable;" South Dakota, 1890, the same; Mississippi, 1884, "to revise tariffs;" New Hampshire, 1883, "to fix tables of maximum charges." (See 63 N. H. 259.) Kansas: on complaint and proof of unreasonable charge Commission may fix reasonable rates, and if companies don't comply they may be sued for damages. The Massachusetts Commission has "authority to revise the tariffs and fix the rates for the transportation of milk" (158 Mass. 1). In New York the board may notify the railways of changes in the rates, etc., it deems requisite, and the Supreme Court may in its discretion issue mandamus, etc., subject to appeal. In Nebraska the State Supreme Court has held that general language prohibiting unreasonable rates, and giving the Commission power to enforce the law, is sufficient to confer authority to fix reasonable rates in place of those found unreasonable, such authority being essential to the efficient execution of the law against excessive rates (22 Neb. 313).

In none of the States does the power to regulate rates appear to have produced results of much value. In some States, Georgia, Texas, Nebraska, Iowa, etc., the power has been at times vigorously used, but the effect has been to antagonize the railroads, which have so much power that is beyond the reach of any State Commission that they can arrange their tariffs and service so as to work against the aggressive States and disgust the people with the consequences of trying to control the rates. Senator Newlands, who is sincerely on the people's side in the struggle for justice in transportation, voiced the common opinion when he said in the United States Senate, January 11, 1905, "As to the rate-regulating power, my judgment is, and it is the belief of almost all experienced men in this country, that the rate-regulating power exercised by the States has not, as a rule, been beneficially exercised."

In his message of December, 1904, President Roosevelt urged Congress to give the Interstate Commission power "to revise rates and regulations, the revised rate to go into effect at once and to stay in effect, unless and until the court of review reverses it." He laid especial emphasis upon the necessity of stopping rebates and unjust discriminations, saying: "Above all else, we must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates." In his message of December, 1905, the President alters his recommendation to the granting of power to fix a "maximum reasonable rate, the decision to go into effect within a reasonable time and to obtain from thence onward, subject to review by the courts." In case a "favorite shipper is given too low a rate," the President says, "the Commission would have the right to fix this already established minimum rate as the maximum; and it would need only one or two such decisions by the Commission to cure railroad companies of the practice of giving improper minimum rates." (See below, recommendations of the New York Board of Trade, from which, perhaps, the President took this suggestion.)

The President says the law should make it clear that unfair commissions and fictitious damages, free passes, reduced passenger rates and payments of brokerage, are illegal; and that it might be wise "to confer on the Government the right of civil action against the beneficiary of a rebate for at least twice the value of the rebate; this would help stop what is really blackmail. Elevator allowances should also be stopped.

"All private car-lines, industrial roads, refrigerator charges, and the like should be expressly put under the supervision of the Interstate Commission or some similar body. . . . Neither private cars nor industrial railroads, nor spur-tracks should be utilized as devices for securing preferential rates. A rebate in icing charges or in mileage

or in a division of the rate for refrigerating charges is just as pernicious as a rebate in any other way. . . . No lower rate should apply on goods imported than actually obtains on domestic goods from the American seaboard to destination except in cases where water competition is the controlling influence.

"There should be publicity of the accounts of common carriers. . . . Books or memoranda should be open to the inspection of the Government.

"The best possible regulation of rates would, of course, be that regulation secured by honest agreement among the railroads themselves to carry out the law. . . . The power vested in the Government to put a stop to agreements to the detriment of the public should, in my judgment, be accompanied by power to permit, under specified conditions and careful supervision, agreements clearly in the interest of the public. . . . But the vitally important power is the power to fix a given maximum rate, which, after the lapse of a reasonable time, goes into full effect, subject to review by the courts."

The President further says: "I urge upon the Congress the need of providing for expeditious action. . . . The history of the cases litigated under the present commerce act shows that its efficacy has been to a great degree destroyed by the weapon of delay, almost the most formidable weapon in the hands of those whose purpose it is to violate the law."

A summary of the principal provisions in some of the rate bills that have been brought before Congress will illustrate the various methods proposed for the better control of railroads. The Dolliver Bill provides that, when the Interstate Commerce Commission, after full hearing upon complaint, is of the opinion that a rate is unjust, unreasonable, or unduly discriminatory, it shall fix a just and reasonable maximum rate to go into effect 30 days after notice. The power applies to joint rates, fares, and charges, as well as to those within a railroad system. Broad

provision is also made to cover the fixing of mileage rates, car rentals, etc. The Commission may order a carrier to cease and desist from any regulation and practice found to be unjust, unreasonable, or unduly discriminatory. All orders are to go into effect 30 days after notice unless the Commission extends the time to 60 days, or the order has been suspended or modified either by the Commission or by decree of a competent court. A penalty of \$5,000 for each day an order is disobeyed, and for each separate offence, is provided for against any carrier, officer, representative, or agent who knowingly fails or neglects to obey any order as aforesaid; and the Commission may also apply to the Circuit Court for injunction, or other proper process, to compel obedience. Appeal may be taken to the Supreme Court. Railroads must give 10 days' public notice of advances in rates, and 3 days' notice of reductions, but the Commission may in its discretion allow changes on less notice.

The Foraker Bill, which is understood to be preferred by the railroads, provides for thorough inspection of books, records, and transactions of interstate roads by agents of the Commission; and if any rate is found to be unjust, or unreasonable, or the carrier "is committing any discriminations forbidden by law, whether as between shippers, places, commodities, or otherwise, and whether affected by means of rates, rebates, classifications, differentials, preferentials, private cars, switching or terminal charges, elevator charges, failure to supply shippers equally with cars, or in any other manner whatsoever, the Commission, if the carrier will not desist upon due notice, may state the case to the Attorney-General, who is to bring suit in the circuit court in any district in which the act complained of, or part of it, was committed, and the court shall summarily handle the case and enjoin such rate or conduct as it finds unlawful or what is in excess of what is reasonable and just." Appeal shall lie to the Supreme Court. The Bill

authorizes agreements between railroads in respect to rates or charges and their maintenance so long as the agreement is not in *unreasonable* restraint of trade.

The provisions for inspection and combination seem to us eminently just and useful, although the latter is strenuously opposed by many on the ground that it authorizes and invites all the railroads of the United States to form a huge trust and monopoly to fix rates for the whole country. This, it is claimed by ex-Senator Chandler, "gives away all that has been gained by the Supreme Court decisions in the cases of the Trans-Missouri Freight Association, the Joint Traffic Association, and the Northern Securities Company. In the Joint Traffic Association case the nine railroad systems between New York and Chicago formed an organization of three billions of capital, made all the rates, and prohibited any one of the roads from lowering any rate without the consent of the nine managers of the trust. The court destroyed this three-billion monster. The Foraker Bill creates a fourteen-billion monster, which will prevent any railroad anywhere in the country from lowering any rates without the consent of the traffic managers of the combination."

The plan of making the Interstate Commission a mere investigating body with no power to fix a rate, but only to state the matter to the Attorney-General, leaving the case to be tried on his initiative piecemeal in the circuit courts all over the country, with appeal to the Supreme Court, seems to us much more objectionable than the permission to form rate agreements. Under any such form of court procedure it will be possible for the railroads to delay final decision, fixing of a just rate, or abolition of an unjust practice for years.

Senator Elkins' plan is substantially the same, his idea being to give the Commission no real power over rates, but only the right of petition for judicial action. And suits may be brought in the Federal courts of every district

through which the lines of the carrier in fault are operated, with appeal on every suit to the Supreme Court of the United States.

Mr. Hearst has introduced a bill to bring the pipe lines carrying oil within the Interstate Act and subject them to the jurisdiction of the Commission ; and another bill enabling the Commission to fix a rate, not merely a maximum rate, but the actual rate that is to be used in place of any rate found unreasonable or unjust. The order to take effect after 30 days. A special court of interstate commerce is provided for, which shall have exclusive jurisdiction to review the orders of the Commission, and suspend, annul, or enforce such orders, with an appeal to the Supreme Court only on questions of constitutional law. These are admirable measures in many ways, but are probably too radical for passage through the Senate, in which railroad interests have so large a representation.

Of the other bills the most important are the Esch-Townsend Bill, the Interstate Commission's Bill, and the Hepburn Bill. The Esch-Townsend Bill was intended to give the Interstate Commission full power to fix a specific rate, either single or joint, in place of a rate found to be unreasonable or unjust, and to establish a special court of transportation to have exclusive original jurisdiction of all suits to enforce or prevent the enforcement of orders issued by the Commission under the act.¹⁷ Last year this Bill

¹⁷ The Bill provides that "Whenever . . . the Interstate Commerce Commission shall . . . make any finding or ruling declaring any rate, regulation or practice whatsoever affecting the transportation of persons or property to be unreasonable or unjustly discriminatory the Commission shall have power and it shall be its duty to declare and order what shall be a just and reasonable rate, practice or regulation to be . . . imposed or followed in the future in place of that found to be unreasonable" etc. It also provides that the order of the Commission shall take effect 30 days after notice, but may on appeal within 60 days be reviewed by a special transportation court having exclusive jurisdiction of all such cases. By Section 12, the case is to be reviewed on the original record, except when there is newly discovered evidence which was not known at the hearing before the Commission, or could not have been known with due dili-

was regarded as the most important measure before Congress, but this year, 1906, it has been superseded by the Hepburn Bill.

The main points of the Commission's Bill are: 1. That power be granted the Commission, after full hearing, to fix the rate or practice to be observed in the future in place of the rate or practice found by the Commission to be unreasonable or unjust.¹⁸ 2. That the Commission shall have authority to prescribe the form in which railway books shall be kept, with the right to examine such books at any and all times.¹⁹ 3. That private car-lines, industrial railroads, import and export rates, etc., shall be brought within the scope of the Commission's power. 4. That the time of notice of tariff changes shall be extended to 60 days, subject to modification in the discretion of the Commission, and the Commission says: "We think that 60 days is not too long in the great majority of cases, and that such length of notice would add greatly to the stability of rates." 5. That the Commission shall have authority to order railways to continue through routes and joint rates and to prescribe the divisions which the several carriers shall receive in the distribution of those rates in case they fail to agree among themselves. At present "carriers are

gence, and the findings of fact by the Commission are *prima facie* evidence of each and every fact found. The only appeal from the court of transportation is to the United States Supreme Court.

¹⁸ I. C. C. Rep. 1905, p. 9.

¹⁹ The granting of such power of inspection and publicity has been urged by the Commission upon Congress in previous reports. On page 11 of the Report for December, 1905, the Commission says: "We have also called attention to the fact that certain carriers now refuse to make the statistical returns required by the Commission. For example, railways are required, among other things, to indicate what permanent improvements have been charged to operating expenses. Without an answer to this question it is impossible to determine to what extent gross earnings have been used in improving the property and the actual cost of operation proper. . . . Certain important railways decline to furnish this information at all, and others furnish it in a very imperfect and unsatisfactory manner."

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under no legal obligations to establish through routes or joint rates, and may at their pleasure withdraw from such arrangements when they have been actually entered into," so that "if the Commission were to pronounce a joint rate unreasonable and order a reduction of that rate and the carriers parties to the rate should thereupon either cancel all joint arrangements, or, as they might, cancel their joint rates upon the commodity in question, the Commission would be practically powerless to enforce the reduced rate. When it is considered that a large part of the most important rates of this country are joint rates, it will be seen that the railways have it in their discretion by this means to largely defeat the purpose of the law."²⁰

The Hepburn Bill, which is one of the strongest measures before Congress, provides that the Interstate Commission, on complaint and proof that any railway rates or charges, or any regulations or practices affecting such rates are unjust, or unreasonable, unjustly discriminatory, or unduly preferential or prejudicial, may determine and prescribe what will, *in its judgment*,²¹ be the just and reasonable rate or charge, which shall thereafter be observed as the maximum in such case; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed. The order is to go into effect thirty days after notice to the carrier. And any company, officer, or agent, receiver, trustee, or lessee who knowingly fails and neglects to obey any such order is liable to a penalty of \$5,000 for each offence; and in case of a continuing violation each day is to be deemed a separate offence. It is provided that the Commission may establish maximum joint rates or through rates as well as rates pertaining to a single company, and may

²⁰ I. C. C. Rep. 1905, pp. 9, 10.

²¹ This clause together with the words italicized in the next paragraph make the ruling of the Commission final so far as the merits of the case are concerned. (See Appendix B.)

adjust the division of such joint rates if the companies fail to agree among themselves. The Commission may also determine what is a reasonable maximum charge for the use of private cars and other instrumentalities and services, such as the switching services of terminal railways, etc. No change is to be made in any rate except after thirty days' notice to the Commission, unless the Commission for good cause shown allows changes upon shorter notice.

The Commission may petition the Circuit Court to enforce any order the railroads do not obey. And if on hearing "*it appears that the order was regularly made and duly served*, and that the carrier is in disobedience of the same, the *court shall enforce* obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same." Appeal may be taken by either party to the Supreme Court of the United States. The Commission may in its discretion prescribe the forms of all accounts, records, and memoranda to be kept by the railways, and provision is made for inspection as follows:

"The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers."²²

²² As the galley proofs of this book go back to the printer, the Hepburn Bill has passed the House by a big majority. If passed by the Senate and put in force, it promises to operate as a serious check upon the abuses connected with private cars, terminal railroads and midnight tariffs, but it does

We are heartily in favor of the Hepburn Bill and would be glad to see far stronger regulative measures passed, but nothing more than a moderate palliation of the railway evils under which we suffer must be expected from such legislation. England with her rigid control has not been able to stamp out railroad abuses, and the lesson of English railroad regulation is that the subjecting of private

not touch at all nine-tenths of the methods of discrimination. We have seen that between 60 and 70 different methods of unjust discrimination between persons and places are in use in our railway business to-day. The fixing of a maximum rate cannot prevent either secret rate-cutting or favoritism in facilities and services, or even open discrimination in the arrangement of classifications and adjustment of rates between different localities.

No doubt this law in the hands of an able and honest commission would do much good, but it cannot reach the heart of the railroad problem, which is the unjust discrimination between persons and places. No amount of maximum rate-fixing or prescribing of regulations can destroy discrimination so long as we have the pressure of great private interests driving the railroads into the practice of favoritism.

The history of railroad legislation in this country shows that the railways do not respect or obey the law when it conflicts with the fundamental financial interests and orders of the railway owners and trust magnates, whose gigantic power represents the real sovereignty and control in America to-day.

On page 3 of the House Report, 59th Congress, 1st Session, No. 591, January 27, 1906, accompanying the Hepburn Bill the Committee on Interstate and Foreign Commerce says: "It is proper to say to those who complain of this legislation that the necessity for it is the result of the misconduct of carriers. . . . If the carriers had in good faith accepted existing statutes and obeyed them there would have been no necessity for increasing the powers of the Commission or the enactment of new coercive measures."

What reason is there to believe that the railroads will accept a new statute in good faith and obey it any more than any former law? On the contrary, the probability is that if the Hepburn Bill becomes a law the main effect will be to compel railway managers and counsel to sit up nights for a time planning methods to evade and overcome the new provisions. Even if Congress gave the full power at first demanded by the President, to fix the precise rate to be charged, the general effect would probably be that railways would exert themselves to control the Commission. They have always at hand the weapon of practically interminable litigation, and it is very doubtful whether the railroad representatives in the United States Senate will permit any law to pass until it is amended so that the review in the courts shall go to the merits of the Commission's order in each case. Powerful interests are opposed to any provision that will permit the fixing of a rate, even a maximum, to go into effect before it is connected already with the Federal courts.

railways to a public control strong enough to accomplish any substantial elimination of discrimination and extortion takes the life out of private railway enterprise along with its evils. Even Germany, with all the power its great government was compelled to exert, could not eliminate unjust discrimination until it nationalized the railways, and so destroyed the root of the evil which lies in the antagonism of interest between the public, on the one hand, and owners of the railways and associated industries on the other.

It will be noted that none of the plans suggested proposes to give the Commission any general power to initiate or originate rates, but only the power of fixing a rate in place of one found unjust or unreasonable. So that if the railroads obeyed the law and made no unreasonable rates or unjust discriminations they would still have the whole rate-making power in their own hands and the Commission would have nothing whatever to do with fixing railroad rates.

Let us now examine briefly the merits of the leading remedies proposed.

Pooling.

Many railroad men have advocated the legalization of pooling and combination as a remedy for discrimination. A number of railway presidents and managers have told me they believed this would stop discrimination, and that nothing else would. Others have assured me that pooling could not stop discrimination, and even those most emphatic at the start in the opinion that pooling is the needful remedy have admitted on further questioning that pooling would only stop one class of discrimination. Take for example the statement of the president of one of the greatest railroad systems in the country who is a strong advocate of the legalization of pooling.

“How do you think unjust discrimination can be stopped?” I asked.

"Give the railroads a right to pool," he said.

"Will pooling stop discriminations accorded to business concerns in which the railways or their managers are interested?"

"No."

"Will it stop any kind of discrimination except those that grow out of competition among the railroads?"

"No, I guess not."

To another railroad man of wide experience in inter-railway contracts, I said: "Can any pool prevent the owners of big concerns in oil, beef, grain, steel, etc., from getting special advantages, or abolish discrimination in the supply of cars, quickness of carriage, division of rates, classification, long and short haul, passes, political favors, and other forms of favoritism originating in causes independent of competition among the railroads?"

"No, of course it cannot," he replied.

Such questions never fail to bring an admission that pooling cannot be relied on for the whole of the work to be done in this field. In fact only one of the six motives for discrimination²³ arises from the competitive conditions that pooling is expected to remove. Combined roads will make discriminative rates to create new business, to solidify traffic, to favor places or concerns in which they are interested, to favor persons of large influence who may aid or injure railroad interests, or to injure persons or places that have incurred their displeasure. All but 2 of the 64 methods of discrimination above enumerated would find a use under a pooling system or even if combination were complete and competition entirely done away with, as the reader may see for himself by running over the list on pages 229-232.

Even competitive discrimination is not eliminated by pooling, for the railroads will not stick to the pool. A railroad president has been known to go from the room in

²³ See statement earlier in this discussion.

which he had agreed with other railroad potentates to pool their business and maintain rates, and hunt up at once a big shipper, offer him a cut rate, and get a contract taking the whole of his business away from the other roads.

Albert Fink, the greatest traffic association organizer we have had, complained bitterly that rates agreed upon in a convention were frequently cut before the convention had dispersed.²⁴ President Tuttle of the Boston and Maine says: "I never knew a pooling arrangement that prevented competition or was wholly satisfactory. There was never what was considered an equitable distribution of traffic to anybody, because the strong lines that could control and handle 50 percent of the traffic were always struggling against parting with any of that 50 percent, while the weak, 10 percent road was always trying to get 15 percent."

The man who drew the first pooling contract made in this country and has drawn many since says that pooling will not stop even competitive discrimination, because the roads will slash rates on the sly to get business. In other words pooling does not eliminate the struggle for traffic. Company A has 25 percent of the pool money between certain points. It cuts rates on the quiet and gets 30 or 35 percent of the business, and then says: "Gentlemen, I'm carrying 35 percent of the traffic and I want more of the pool money." The gentleman just mentioned told me that this sort of thing had been done in every case of pooling with which he was acquainted.

Sometimes the break in the rates is known to the Association but assented to or tolerated because it is clear that a break is bound to occur anyway, and may be enlarged rather than diminished by resistance. Some years ago when Chauncey Depew was president of the New York Central system, he said: "Large shippers arbitrarily transfer the whole of their business from one line to another. That leaves a weak line denuded of its business.

²⁴ Sen. Com. 1905, p. 3485.

"A weak line is a line which is dependent largely upon through traffic and which has not much local business. These great shippers who control anywhere from ten to twenty-five cars a day will take all their business off this weak line and put it on the strongest line, which already has all it can do.

"Then the weak line is in trouble, and it comes to these shippers and says: 'Well, how can we get you back?' The shippers say: 'You can only get us back by giving us five or ten cents a hundred off from the tariff.' The weak line invariably does it."

Then Mr. Depew gave an instance of "one of the great merchants of the West" who, on the organization of the Joint Traffic Association, said:

"I never have paid within twenty-five cents a hundred of tariff rates, and I won't do it now." "His business," continued Mr. Depew, "was on what we call one of the weak lines. He took it off that line and put it on one of the strongest lines. That left the weak line without any west-bound business.

"Then the weak line said: 'We have got to have business.' So we simply closed our eyes while the weak line gave a rate twenty-five cents a hundred less than the rest of us charged, and this firm advanced while the others were stationary or went out of business. This firm advanced by leaps and bounds to the front rank and toward the control of the business." If all the roads in the field do not come into the pool there is every temptation for the outsider to cut rates. For example, in 1896 one of the trunk lines outside of the Joint Traffic Association was carrying grain from Chicago to the seaboard at 13 cents per hundred when the established tariff, which the Association was supposed to be maintaining, was 20 cents.²⁵

The whole history of the traffic associations shows that discriminations can be guarded against by pooling only to

²⁵ Dept. of Commerce, Monthly Summary, April, 1900, p. 3991.

a very limited extent.²⁶ The legalization of pooling would enable railroads that wished to insist on the maintenance of rates to bring suit against roads disregarding the agreement. This would make it harder to get all the railroads into a pool, for part of the inducement is the impunity with which the agreement may be shuffled off, while on the other hand the degree of respect manifested by the railroads for the law does not justify much hope that it would be effective in holding them to any pooling contract if they thought they could make more by breaking it than by keeping it. The fact is that the railroads understand each other now about as well as if pooling were legalized. They constantly make rate agreements and have no hesitation in securing whatever degree of unity they desire with or without law. Pools at best do not apply to local traffic, but only to business between competing points, so that all discriminations in local traffic are left absolutely untouched. And as to competitive points, pooling is far less effective than consolidation, and consolidation has shown no tendency to do away with any more than one of the six classes of discrimination, while it emphasizes and extends the discriminations in favor of the great industrial interests whose ownership is interlocked with that of the big railroad systems, so that the advance of consolidation means the extension of the influence of the giant industrials in whose favor the most grievous discriminations are granted.

Pooling and combination are good in many ways,²⁷ and ought to be legalized;²⁸ but they cannot be relied on to

²⁶ See Ind. Com. vols. iv and ix, and Hudson, Hadley, etc.

²⁷ They tend to stability, economy, and efficiency, diminishing the fluctuation of rates, railroad wars, and the wastes of competition, and improving the service by better co-ordination, distribution of traffic, etc.

²⁸ See the powerful statements of President Ingalls, President Fish, Paul Morton, Professor Seligman, Commissioner Prouty, etc., Ind. Com. vol. iv; and statements of Professor Ripley, Morawetz, Fordyce, etc., Sen. Com. 1905. It is absurd to forbid co-operation for the maintenance of reasonable rates and prevention of superfluous transportation, or any other honest purpose.

abolish discrimination,—they leave the worst forms untouched, intensify some of them, and diminish only one of the six classes of preference. Shippers have a strong prejudice against pooling, and the railroads do not care so much about it as they used to, for consolidation and mutual understanding have enabled them to accomplish in part the purposes they had in view in the traffic agreements of earlier years.²⁹

Wrestling with the Long-Haul Abuse.

In respect to the long and short haul abuse, Commissioner Fifer, Brooks Adams, and others argue that the practical remedy is to make the long-haul clause of the Commerce Act binding except where the railroads come in and get an order releasing them to a specified extent from the operation of the clause.³⁰ The idea is to put the burden of showing the need of an exception on the railroad. At present the burden really rests on the complainant. The railroads disregard the law with impunity. It is easy to show dissimilar circumstances, and then it is necessary for the plaintiff to show that the circumstances are not so dissimilar as to warrant the discrimination made. It is very

Traffic agreements may secure a co-ordination of service approaching that which would be attained by unity of management. The fetish-worship of competition is one of the prime curses of our economic ignorance. We might as well worship destruction, injustice, and inefficiency. Moreover, competition of the kind that protects the public from oppressive rates cannot be maintained in the railway world. Let the railways unite, and then control them, insisting on the dominance of the public interest so far as necessary to accomplish justice.

²⁹ The United States Supreme Court held in the *Trans-Missouri Case*, March 22, 1897, and the *Joint Traffic Association Case*, Oct. 24, 1898, that railroads cannot lawfully agree on rates to competitive points. But no law or decision can well prevent railroad managers from meeting and coming to an understanding that they will adopt the same rates to such points. No contract in restraint of trade or to limit competition is necessary,—if each railroad publishes the same rates between “competitive” points and maintains them, competition as to rates is killed as effectually as if there were a pool or a traffic association with a written agreement.

³⁰ Sen. Com. 1905, pp. 2923, 3338.

difficult to satisfy a court on this point, and so the rates stand and the clause is practically nullified. Forbid departure from the clause absolutely unless the carrier has obtained an order of release, and you put the burden of proof where it should lie, namely, on the party that desires to depart from the rule of equal treatment.

A Drastic Cure for Rebating.

For the cure of discrimination, the Transportation Committee of the New York Board of Trade suggests that Congress enact a law authorizing the Interstate Commission, in case of any rebate or other device for securing low rates, to declare that the net rate so made by the railway or car owners shall be the regular tariff rate, published as such, and open to all shippers; said new rate to take effect immediately, subject to appeal within 60 days upon questions of law.³¹ The Committee says the proposal is based on the plan suggested by "Albert Fink, the ablest of all American railroad managers," and adopted by the joint executive committee of the associated railroads in 1882.³² "The giving of unlawful rebates by traffic agents would be preventable if the agent felt assured that such acts would be followed by his dismissal, and the officers of the company would find a way to remove an offending agent or to bring him under control if a punishment of suitable severity were certain to be imposed upon the road for the violation of the law against the giving of rebates."

This would indeed be a drastic remedy, and very effective for the prevention of the discovery of discrimination. An

³¹ Sen. Com. 1905, p. 3482.

³² *Ibid.*, pp. 3485, 3486. The railroad managers decided to notify offending railroads that unless rates were restored, the lowest cut rates that had been made by any line would be adopted by all, to punish the rebaters and stop them from getting business thereby. At a meeting July 26, 1882, 30 railroads being represented, a resolution was unanimously adopted, directing agents at connecting points to examine waybills, and when rates were found to have been cut, to hold the freight at the expense of the initial line until the waybills had been corrected.

association of railroads might ferret out preferences under such a rule, but it would be almost impossible for a public board to do it. It has been for the most part, as we have seen, practically impossible for the Commission to get evidence of specific facts of discrimination, even under the comparatively mild laws they have tried to enforce. And under such a law the difficulty would be increased tenfold. Moreover, if discrimination were discovered and the rule proposed were put in action, discriminations would thereby be crystallized and legalized, and great disturbances produced in the business of railroads and of the community. Suppose it were discovered that a certain shipper of wheat from Chicago east had a 10 cent rate over the Erie, while the published rate on all the lines was 15 cents. Immediately the 10 cent rate would be open to all shippers over the Erie. The Erie might be stricken with a sudden dearth of cars, and be unable to handle the traffic at all. It would pay the other roads to arrange with the Erie to be stricken that way. For if the Erie handled the traffic, the other roads would have to come down to 10 cents and suffer a severe loss, or lose the business and suffer a severe loss that way. Moreover, the difference in rates on wheat and flour and other commodities would constitute serious discrimination, petrified and perpetuated by law. Again, if many cut rates were discovered in various lines of business and various degrees of discount, the whole tariff would be thrown into confusion worse than the normal chaos. Rates not in the discovered list would have to be raised to save the revenues of the roads, the long and short haul rule would go to the winds, and bankruptcy would threaten not only the culprit railroads but individuals and communities not conditioned so as to be favored by the cut-rate lists. On the other hand, if the railroads tried to be good, the pressure of the big shippers for concessions would put many roads to serious inconvenience and threaten them with dangers and losses almost as great

as those accompanying disobedience, and far more immediate and certain. Under such circumstances the temptation to secure secrecy at any cost, and if need be to control the Commission and the courts, would be irresistible.

Most of those who favor further control of railroads advocate milder methods. The favorite remedies are public inspection and the fixing of rates by a commission or court of arbitration or tariff revision. The facts above stated showing the secrecy of many forms of preference and the difficulties of enforcing the law because of the impossibility of getting railroad officers to reveal the facts indicate the necessity of systematic and thorough public inspection, but also suggest a doubt as to its effectiveness. If railroad officers destroy their papers and refuse to state the facts on the witness stand, is it not possible that they will keep any record of discrimination practices from appearing in the books and papers they submit to inspection? Inspection and publicity are excellent aids to reform, but they are insufficient in themselves. We have had already a small-sized ocean of publicity through the investigations of the Interstate Commerce Commission, but the results have been very small.

CHAPTER XXXIII.

FIXING RATES BY PUBLIC AUTHORITY.

FOR years the Interstate Commerce Commission has been declaring that when, on complaint and investigation it finds a rate to be unreasonable, it ought to have power to fix a reasonable rate to take the place of the unreasonable one, the order to be binding on the railroad for a moderate period, subject to revision in the courts. For the first ten years after the Interstate Commerce Act was passed no railroad denied the right of the Commission to fix rates, and the Commission says it was supposed that they possess the power. But the Supreme Court finally ejected this impression in 1896, and again in 1897, and the Commission appealed to Congress for the restoration of the authority that was swept away by the interpretation of the majority of the Court. Congress for a long time paid no attention to the Commission's request for further powers, but President Roosevelt took up the matter and pushed it with the splendid vigor that characterizes all he does. In his message of 1904, already referred to, he said: "Above all else, we must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference; the rebate must be stopped, the abuses of the private car and private terminal-track and side-track systems must be stopped, and legislation of the Fifty-eighth Congress, which declares it to be unlawful for any person or corporation to offer, grant,

give, solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce whereby such property shall by any device whatever be transported at a less rate than that named in the tariffs published by the carrier, must be enforced. . . . The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it." The President's message of December, 1905, has already been quoted at sufficient length in Chapter XXXII.

In the last two years the legislatures of 18 States have passed joint resolutions petitioning Congress to enact legislation for the regulation of railroad rates; 12 States took this action last winter, 1905, and asked their representatives and senators to secure the enactment of such a measure. Commercial bodies in various parts of the country have also petitioned for such legislation, while others have protested against it.¹

The Esch-Townsend Bill (1905) giving the Commission power to fix rates passed the House, but failed to pass the Senate.² As stated in the preceding chapter, the House has passed the Hepburn Bill by a very large majority and it has gone to the Senate, where a determined effort will undoubtedly be made to secure at least a provision for judicial review on their merits of all orders of the Commission.

¹ Sen. Com. 1905, p. 1908, and index, "Rate-Making."

² The Senate is too full of men interested in railroads in one way or another to make it easy to pass any measure that might seriously affect either the power or the profits of the roads.

Objections of Railroad Men.

Railroad men object to further regulation till the effectiveness of the present laws has been thoroughly tested. In answer to the question what he would do to stop discrimination, President Tuttle of the Boston and Maine Railroad said to me this morning: "Enforce existing laws. The Interstate Commission can investigate the railroads. It need not wait for complaints. It can act on its own initiative. It can have experts examine the railroad books. It can publish the facts, and publicity is a powerful corrective. It can put the facts it secures in the hands of the Attorney-General, and if the Department of Justice will prosecute promptly discrimination can be stopped. There were no prosecutions even after the Hutchinson salt investigation. The law is ample. The trouble is that no adequate effort has been made to enforce it."

The Commission says that as a rule it cannot get the facts. In some cases it has succeeded, but usually it is thwarted in respect to personal discriminations (to which President Tuttle's argument chiefly applies) because they are secret, and neither railroad men nor the favored shippers will ordinarily tell the truth about them, and railroad books do not commonly contain any record of them.³

³ President Tuttle agrees with the Commission on this point. In his testimony to the Senate Committee, 1905, he said that the company's books would not show rebates, etc., "unless they wanted them to. I will say to you frankly that if a company intended to evade the law by giving rebates and commissions they would find some way of so covering them up that all the experts on the face of the earth could not find them. If you assume at the beginning that the railroad management is deliberately going into violations of the law it is not going to make records of those things which can ever be found out." (Sen. Com. 1905, p. 952.) But President Tuttle said: "There is ample opportunity to ascertain if rebates exist. There are always opportunities. The competitive shipper knows about it. There is always enough of the loose end hanging out somewhere so that if the Interstate Commerce Commission or whoever is authorized to move in those matters will take the time to proceed upon the lines of information that they can always get they will be easily ferreted out and punished. I do not think there is any evidence that the Interstate Commerce Commission has tried to enforce the El-

Where the Commission has obtained evidence of unlawful discrimination it has turned the facts over to the Department of Justice, which has not prosecuted promptly, in many cases not at all, and has sometimes prevented prosecutions which United States district attorneys were ready to begin.

There seems to be good reason to believe it is true that existing laws have not been fully enforced; that in addition to the difficulty, perhaps impossibility, of getting at the facts in many cases, wrongdoers have escaped punishment even where the facts were fully known; and that a commission to investigate the Department of Justice, and try the effect of publicity there, may be as essential as a commission to investigate the railroads. Some criticism seems to attach also to the Interstate Commission, as it does not appear that they have asked the Department of Justice to prosecute senators and congressmen, legislators, judges, etc., well known to be riding on passes, nor to punish the railroads for giving them.

As long as express companies and water carriers are not within the Interstate Act, and doubt exists as to private cars and terminal railroads, there is room for further legislation. And in respect to excessive rates and tariff discriminations between places and commodities, though the facts can be easily ascertained, the remedy is regarded by the Commission as wholly inadequate under existing laws, because of the emasculation of the long and short haul clause by the interpretation given it by the Supreme Court, and because the railroads are able, whenever they choose, to delay the enforcement of an order for years by litigation, conceding at last perhaps only a small part of what they

kins Law." (Same, p. 951.) Shippers have, however, often stated that they felt sure *some* concession was being made to their rivals, but they could not tell what, and in many cases there is simply a vague suspicion; no one knows whether others are paying the tariff rates or not. And railroad men have admitted, as in the B. & A. case, that no shipper knew what rates others were getting.

should concede and so requiring further years of contest to approach another step toward justice. So the Commission asks for power to fix a reasonable rate in place of one found unreasonable, and to put the new rate into effect at once subject to subsequent revision on appeal by the carrier.

The railroads seriously object, first, to the fixing of their rates by anybody but themselves, and second, to the putting of such rates into effect before they are tested in court. The immediate enforcement of a rate order is most strenuously opposed, and with much force of reason. The railroad people say that rate-making is very difficult and many mistakes are likely to be made. Railroad history certainly affords ample ground for this conclusion. But they say, or imply, that the Commission makes more mistakes than they do. They declare that only trained traffic experts can deal successfully with rate questions; that the Commission has made so many errors that almost every one of its decisions that has gone to the courts has been overruled; and that great havoc would have been wrought if these decisions had been put into effect at once without judicial review. "Take for example, the Maximum Rate Case where the Commission ordered the rates from Cincinnati to important Southern points cut down 15 or 20 percent. This change in rates to the basing-points would have affected two or three thousand rates. Some of the railroads didn't have a margin of more than 15 or 20 percent and they determined to fight the case. It is true that the Commission exercised the power to fix rates a number of times in the first ten years, but the cases were comparatively insignificant and the railroads said, 'Oh, well, let it go. We'll take the rate the Commission wants.' But when it came to the Cincinnati case the situation was serious and the railroads said, 'These fellows haven't got the power to make rates. In the debates on the Commerce Bill in Congress it was distinctly declared that no such power was intended to be

given. We'll take the question to the courts.' And the courts sustained the railroads. Now what would have been the consequence if the Commission could have put its order into effect at once? The railroads would have been subjected to serious losses during all the time that might elapse before they could get a decision reversing the order of the Commission. I often takes years to get a final judgment and there would be no way for the railroads to recover for the losses entailed by erroneous orders." This is the argument substantially as presented to me by President Tuttle and there is great weight in it.

Alleged Errors of the Commission.

Another railroad president turns the lime-light of mathematical analysis on the errors of the Commission. David Willcox, President of the Delaware and Hudson, says: "About 93 percent of the decisions of the Commission which have been passed upon by the courts have been held to be erroneous. In case, therefore, the Commission had the future rate-fixing power, so far as its decisions were in force until the courts passed upon them, injustice would be accomplished in 93 percent of the cases. For this there would be no remedy, because no recovery could be had from those whose goods had been carried at unjustly low rates."⁴

We shall see that this statement gives too strong an impression of the capacity of the Commission for mistakes, but there is no doubt that it has made mistakes, that any person or persons attempting to fix rates, even the railroad managers themselves, are liable to make mistakes, and that losses result to the roads from their own mistakes and might naturally result from the mistakes of a commission or court if its erroneous orders were enforced upon them.

It may be said that if the orders of the Commission went into force immediately it would be the interest of the rail-

⁴ Sen. Com. 1905, p. 3644.

roads to hasten the proceedings in court instead of prolonging them indefinitely as they are too apt to do, and that with reasonable provisions for prompt adjudication and the stimulus of powerful railroad interests in that direction, the delay of the law, or this branch of it, at least, would vanish. It may also be said that the railroads could recoup themselves for the losses under discussion by curtailing the service they render for the new rates, or by raising other rates not fixed by the Commission. But the Commission might veto the raising of other rates, and the entailment of service would be very undesirable. The question arises whether it would not be fair for the public to stand any loss clearly resulting from an improper order of its Commission, or else require that any order the validity of which is questioned should be passed upon by the court before it is put into effect? The Commission is itself perhaps a sufficient court in respect to questions of fact, and if it were arranged that in case of dispute on a question of law the Commission might call upon the Supreme Court for an immediate interpretation of the law, the rulings of the Commission could be squared with the law at the start, and the danger of loss from an erroneous order would be reduced to a minimum.

As above remarked, the mistakes of the Commission have not been so vast as the reader might infer from the percentage of overruled cases stated by President Willcox.

The work of the Commission may be summarized as follows:

It has received about 3,726 informal complaints relating to overcharges, classification, rates, etc. Most of these, perhaps 3,200, have been disposed of by correspondence or some mild form of arbitration, very many have been settled satisfactorily, some have been abandoned, and some have crystallized into formal complaints. The total number of formal complaints has been about 854, including those that were formal at the start and those that started

as informal complaints and grew to be formal through failure of adjustment by conciliatory methods. "From 1887 to October, 1904, the Commission rendered 297 decisions involving 353 cases, two or more cases being heard and decided together in some instances. About 55 percent, or 194, of the decisions were in favor of the complainant and 45 percent in favor of the railroads.⁵ Mandatory orders were issued to the number of 170. Of these 94 were complied with by the railroads, 55 were disobeyed, and 21 were partly complied with and partly disregarded. Some 43 suits were instituted to enforce the orders of the Commission; and 34 of these have been finally adjudicated." The Commission claims that 8 cases of excessive rates and unjust discrimination have been decided in its favor, while President Willcox says that the courts have sustained the Commission on the merits in only 3 cases.⁶

⁵ Out of 37 passenger cases (20 rate cases and 17 miscellaneous) the decision was favorable to the complainant in 9; and in 316 freight cases the decision was for the complainant in 185 cases. In 70 of the freight cases the complaint was of excessive charges (half of them charging discrimination also, or relative excess as well as absolute excess); 119 related to charges relatively unreasonable; 52 concerned long and short haul abuses; 20 unreasonable classification, 8 unfair distribution of cars, 41 miscellaneous. Ninety-six of the 316 freight cases were dismissed, 13 settled while pending, 4 left without a general statement and no order, and 17 held for further action. Nearly 90 percent of all the cases, passenger and freight, related directly to some form of discrimination, and indirectly discrimination of some sort was an element in practically every case.

⁶ The 8 cases are the New York and Northern Case (3 I. C. C. 542) the Social Circle Case (4 I. C. C. 744.) the Minneapolis Case (5 I. C. C. 571) the Colorado Fuel and Iron Case (6 I. C. C. 488) the St. Cloud Case (89 I. C. C. 346) the Savannah Case (8 I. C. C. 377) the Tifton Case (9 I. C. C. 160) and the California Orange Routing Case (9 I. C. C. 182). Mr. Willcox thinks the Minneapolis Case and the Colorado Case should be crossed off because the carriers complied with the orders while suit was pending, so that there was no decision on the merits. He says the decision was not on the merits in the New York Case, the St. Cloud Case, or the Tifton Case. In the Social Circle Case the Supreme Court sustained the order in respect to discrimination, but reversed it so far as it attempted to fix a maximum rate. In the Orange Case the Circuit Court sustained the Commission, but an appeal was taken at once to the Supreme Court. In the Savannah Naval Stores Case the Circuit

Mr. H. T. Newcomb, who appeared before the Senate Committee as the representative of several railroads, gives a table showing that in the circuit courts the Commission has been sustained 7 times and reversed 24 times, the Circuit Court of Appeals has sustained the Commission $4\frac{1}{2}$ times and reversed it $11\frac{1}{2}$ times and the United States Supreme Court has partly sustained the Commission in one case and reversed it in 15.⁷

Several comments are necessary. First, about $\frac{4}{5}$ of the Commission's decisions have been right on the railroad's own showing. They claim only 32 reversals out of 170 orders — nearly all the rest have been accepted by the railroads or enforced upon them by the courts. Second, the reversals have been based on questions of law in respect to which the courts disagreed among themselves. The Commission has not been overruled in respect to questions of fact, but on the application of what it believed to be law (and what the framers of the law believed to be law) to the removal of economic abuses. Third, the points of law in respect to which it has been overruled are very few. The decisions have gone in bunches. For instance while the Alabama Midland long and short haul case was pending in the courts a number of other long-haul cases were decided by the Commission, and when, after several years, the Supreme Court gave final judgment, a whole block of the Commission's rulings on this point were discredited and subsequent reversals were simply repetitions involving no new error. So the question of power to fix rates covers a

Court sustained the Commission and no appeal was taken. Two cases in favor of the Commission in the Court of Appeals and one-half a case in the Supreme Court, and one of the circuit decisions is on appeal — one and one-half final affirmatives on the merits out of 34. One would think that Mr. Willcox might allow the Commission the three cases that were decided in their favor although the court did not find it necessary to go into the merits of the matter, and he seems to be less generous about the Colorado Case than Mr. Newcomb, who says the Commission was sustained by the court.

⁷ Work of the Interstate Commission, p. 14, 1905. (See Appendix A.)

cluster of cases all thrown down in reality by one ruling.⁸ And these two questions represent nearly the whole difference between the courts and the Commission. The 15 reversals in the Supreme Court do not mean 15 errors, even in respect to legal points, but only a very few errors if any. Fourth, the higher court reversed the lower in 9 out of the 17 cases that went up from the Circuit Court, and in three of these cases the Supreme Court reversed both the Circuit Court and the Court of Appeals. Fifth, it is by no means certain that the Commission was wrong and the court right. The fact is that the Supreme Court has not interpreted the law according to its manifest and well-known intent, but in a narrow, technical way that has defeated in large part the real purpose of the law. It is an absurdity to rule that the law is valid and then to decide that the railroads may escape from the long-haul section by means of dissimilar circumstances created by themselves. And many believe it to be an equal absurdity to declare that the Commission may order the discontinuance, of an excessive rate or unjust discrimination, but cannot fix a reasonable rate.

Take the Kansas oil rate for example. The railroads at the dictation of the Combine raised the rate, as we have seen, from 10 to 17 cents. Suppose the Commission had ordered the roads to cease charging 17 cents, that being found to be unreasonable. The railroads could appeal and appeal, and if after several years the case went against them they could make a rate of 16½ cents. Then a new investigation could be begun, the Commission could make a new order, and after years in the courts the rate might come down another half cent perhaps. And so on; even if all the decisions went against the railroads it would take

⁸ As the average time required to reach a final decision in a case that goes from the Commission through the Federal courts up to the United States Supreme Court is 7½ years, it is clear that there is plenty of time for the accumulation of a congregation of cases, birds of a feather, waiting for judgment, on the same point.

105 years to reduce the rate to 10 cents again, calculating on the basis of the average period of $7\frac{1}{2}$ years required for final litigation. Why not sum up the process in a single order for the 10 cent rate and if objected to by the railroads have one judicial contest and finish the business. By the indirect method of declaring one rate after another to be unreasonable the Commission has now the power at last to fix the rate. The proposition to allow it to name a reasonable rate is only putting in direct, brief, effective form the power it now has in indirect, diffused, and ineffective form. The railroads might not act in the way described, but the point is that they could do so; there is no power in the law as it stands to-day to compel them to adopt a reasonable rate within a reasonable time.

Again, consider the predicament Commissioner Prouty presents.⁹ If the Commission, considering all the circumstances including railroad competition, finds that the rates from certain points to W should not be higher than the rates to O and orders the railroads to discontinue the discrimination between the two cities, the court will sustain the order and grant an injunction to enforce it. But if the Commission finds that there should be some difference between the rates to the two places, though not so much difference as there is, and it orders the rates to W down so that they will be fair, the courts will annul the order because the Commission has no power to fix rates in the opinion of the Supreme Court.

The railways contend that a relative order would be sufficient. The Commission could say what percentage of the Omaha rate the advance for Wichita should be, and in the Kansas case the rate on oil could be determined in reference to the rates on other commodities. It is true that a relative order could be made, but it might be more embarrassing to the railroads to have a group of rates tied up by each decision so that they could not vary any of

⁹ Sen. Com. 1905, p. 2888.

them without changing the rest, than it would be to have one rate definitely fixed; the subtraction from elasticity might be greater, and the difficulty of determining the true relations between various rates might be far more serious than the fixing of a reasonable rate in the particular case. It would be possible to give the Commission the option to make a relative order or to definitely fix a reasonable rate providing that it should carefully consider the preference of the carrier as to the form of order, the reasons for that preference, and the guarantee the carrier may be willing to give as to *bona fide* compliance with the order, and then make up its judgment in the light of the circumstances in such a way as to accomplish the purpose in view with the greatest certainty and the least friction or interference with the freedom of railroad management.

But the railroads object to the fixing of rates in any manner by a public board,¹⁰ declaring that such a board could not be in sufficiently close touch with traffic conditions all over the country to adapt their rulings to the needs of business, that tariffs would lose the elasticity

¹⁰ The railroads would prefer a court to a Commission if any public body is to have power over rates. They know that proceedings in court are likely to be troubled with long delays, and great expense, and that courts are very delicate about determining what is a reasonable rate. In the Reagan case (154 U. S. 362) the Supreme Court says: "It has always been recognized that if the carrier attempted to charge a shipper an unreasonable sum the courts had jurisdiction to inquire into that matter and award to the shipper any amount exacted from him in excess of a reasonable rate; and, also, in a reverse case, to render judgment in favor of the carrier for the amount found to be a reasonable rate."

In any case of suit by a shipper to recover damages for unreasonable charges the court would have to determine what was a reasonable rate in order to fix the measure of damages, but Chairman Knapp of the I. C. C. says he does not know of a case in which suit was ever brought (Sen. Com. 1905, p. 3301). The fact that very many complaints have been made of unreasonable rates and no suits brought in the courts indicates that court procedure is regarded as inadequate. Courts are by nature judicial, not legislative or executive. And the remedy which can be administered by them in these railroad cases is uncertain, limited, and indirect. (Sen. Com. p. 3362.)

requisite to keep them in harmony with changing economic conditions. A rate that is reasonable to-day may be unreasonable to-morrow. It is said that it keeps several hundred men, 500 to 700 skilled traffic men, working all the time on the adjustment of rates, and that it is beyond the power of half a dozen men to pass on the rate question of a country like this; that Congress cannot delegate to a commission the power to fix rates; that it would destroy the initiative of railroads and hurt their power of borrowing money for improvements, injure investors, and throw the whole railroad world out of gear; that the centralization of power would be dangerous, the disturbance of business and interference with development disastrous, and the practical confiscation of railroad properties and values unjust; that a flood of litigation would follow, and that discrimination would not be removed, for agents hustling for business would cut under commission-made rates as quickly as they cut railroad-made rates.

There is much force in some of these points, none at all in others. There is no reasonable doubt that Congress can authorize a commission to fix rates. Railway Commissions in 21 States have power to fix rates, either absolute or maximum, and some of them have exercised the power vigorously, and a national commission may be given the same power over interstate commerce that a State commission may have over State commerce.

There is more force in the objection based on the lack of elasticity in commission-made rates. Elasticity, however, may easily be overdone and much of the present elasticity is very undesirable. Many flying tariffs and unfair discriminations lurk under cover of that reputable word elasticity. Moreover the Commission would not interfere with any fair rate-making by the railroads. The bulk of the rates would not be touched but only those that were unjust. So that it would depend entirely on the railroads how much of the flexibility they so much admire should be

kept in their own hands. They would keep it all unless they were guilty of dishonest flexibility, in which case the elasticity, which, according to impartial judgment, exceeded the bounds of justice, would be checked.

In reference to the alleged necessity of flexibility in tariffs and the ability of traffic managers to accommodate the rates to fluctuating commercial conditions, Chairman Knapp of the Interstate Commission says that there need not be any tendency to iron-clad rules or undue emphasis of the mileage basis on the part of a Government board, but that the necessity of frequent changes in tariffs is greatly overdrawn. He states that the railroads have kept the same basis of rates since 1887 throughout the most important part of the United States, the "official classification territory" or the section north of the Ohio and Potomac and east of the Mississippi, and that "the class rates which govern most merchandise and articles of manufacture and ordinary household consumption have remained unchanged in all that territory." The railroads changed the classification of many articles about 1900, "but they did not change the rates or the adjustments between localities."

"I take it there is no agricultural product the price of which has shown such wide fluctuations in the last few years as cotton. It is one of the great staple articles of the country; the most valuable per pound of anything that grows out of the ground in large volume. More than half of it is exported and you know the price has gone from scarcely above 5 cents to 16 or 17 cents. And if there is any article which would seem to be susceptible to market fluctuations and the changes in commercial conditions, it must be cotton. But an inspection of the tariffs will show you that the rates on cotton have not been changed in ten years.

"There has been no material change, I think, in any cotton rate in more than ten years, except that certain reductions have been made in the State of Texas by the commission of that State.

"Now, when I observe instances of that kind, when the ablest and most experienced traffic officials tell me that there is no sort of reason for 500 to 1,000 changes in interstate tariffs every twenty-four hours, as our files show there are, you must not be surprised if I fail to accept at par value all that is said here about the necessity of adapting rates to commercial conditions. Undoubtedly, when you take a considerable period of time, great influences do operate to an extent which may justly require material modifications in freight charges, but to my mind it is quite unsuitable that the little surface fluctuations in trade should find expression in extended changes in the daily tariffs. I believe that those surface currents should adjust themselves to the tariffs, and not the tariffs to the currents. And I am saying this, gentlemen, not as a result so much from my own observation or from any *à priori* view of the case as because of the statements made and arguments submitted to me by practical railroad men of the highest distinction."¹¹

To lay stress on the number of men required to arrange the details of tariffs might seem to imply the belief that a very large part of existing railroad rates will be found unreasonable and need the attention of the Commission. It may however imply merely that there is likely to be a very large number of complaints. The fact is that the fixing of rates is a complex business, with a considerable percentage of guesswork, experiment, broad judgment, and arbitrary decision. There are some general principles of cost, distance, what the traffic can pay and move, what shippers demand, what other carriers are charging, what rates are necessary to create new business and fill up the cars both ways, etc., but they are like the principles of law, you can come to any conclusion you wish and then find a principle that will back up your decision. Railroad men do not trouble themselves about consistency. They do not and cannot adjust rates with reference to just relations

¹¹ Sen. Com. 1905, pp. 3297, 3298.

between places and commodities. They are looking for dividends and they make the best rates they can with that object in view. The chief traffic officer of one of the trunk lines, being pressed by the Commission as to his method of making rates, said: "We make rates very much as the honey bee makes its cells, by a sort of instinct." When we look at his rates we find that he is not so successful as the honey bee in respect to symmetry and balance. Another traffic manager whose skill brings him a salary of \$50,000 a year, testifying as to the reasonableness of his grain rates, was asked question after question as to methods of determination, till finally he said: "To tell you the truth, gentlemen, we get all we can." Now it is because the railroads know that the Commission would refuse to adopt this time-honored principle and would aim primarily not at profit to the railroads, but at just and impartial rates—it is this knowledge which more than anything else impels the railroads to such strenuous opposition to any proposal for the fixing of rates by a public board. The matter is of such moment that, when I asked one of our leading railroad presidents what would happen if the rate-making power were put in the hands of a commission, he said: "The stake would be so great that the commission would have to be controlled, that's all."

The railroads have the Senate, and the Senate must confirm all nominations to the Interstate Commission. Aside from the appointment of Judge Cooley all nominations to the Commission from 1887 down have been due, said this railroad president, not to any special fitness for the work, but to political pull. If a commissioner is appointed from a certain State, the senators from that State regard the place as a part of their patronage, and when the term of his appointment expires they insist on the nomination of another man from their State. They say: "The place belongs to our State," and it is always their man, a man they want on the board, who is presented

by them for nomination. Vermont for example has had three members on the Commission in succession, Walker, Veazie, and Prouty; each time a vacancy has occurred in the Vermont representation it has been filled at the dictation of the senators from that State; "even President Roosevelt did not appoint for fitness. When a vacancy occurred he did not look for the man best fitted to serve on such a Commission, but appointed Senator Cockrell of Missouri, a nice old man of 70 that everybody liked, but without any special qualification for the work. The election went to the Republicans in Missouri, so Cockrell couldn't go back to the Senate. He has many friends. The senators all like him, Republicans as well as Democrats, and they said to Roosevelt: 'You must do something for Cockrell; here's a democratic vacancy on the Interstate Commission, put him in there,' and Roosevelt put him in."

This railroad president is a man of the highest character and of very extensive information. Whether or no he is rightly informed in respect to the appointment of commissioners, it is clear that the railroad representation in the Senate could bring tremendous pressure to bear to secure the appointment of men approved by railroad interests, that they could block the appointment of any other sort of men even if nominated, and that the temptation to exert this power to secure men who could be controlled would be practically irresistible if the Commission were given the rate-making power.

The fear of confiscation does not seem to be well founded on the part of the railroads; there is more to justify such a fear on the part of companies and localities unfairly treated by the railroads. The Commission will have no motive to make confiscatory orders, and the courts will protect the roads from everything that is doubtful in the slightest degree as they have done in the past. The real danger of confiscation of values lies in leaving the

railroads free to make such orders as those in the San Antonio case or the Kansas oil case which destroyed the business of independent operators. Adding 25 cents a ton to the coal rates from San Antonio practically confiscated the coal mines at that point, and raising the oil rates in Kansas from 10 to 17 cents practically confiscated, during the continuation of the order, the product of the independent oil wells.

That some disturbance of tariffs and business might result from conferring the rate-fixing power on a public board is quite likely. There is a good deal of business that ought to be disturbed; that of the Beef Trust and the Oil Trust for example would be the better for a thorough house-cleaning. And the tariffs need considerable disturbance to bring them into close relations with the principles of justice. But the disturbance *might* be more than is needful. Our railroads say that Government boards the world over show a tendency to adopt some sort of a mileage basis, in the shape of a zone system or some other form of distance tariff. This would interfere with the equalization of rates, which is one of the best elements in American railroading. The fruits of California are carried all over the country at low blanket rates that enable them to be sold in every hamlet in the country at prices the common people can afford to pay. New England shoes are carried to St. Louis at 1½ cents a pair and to San Francisco for 2 cents a pair. Milk is brought into the cities at the same rate for many miles out. So with the pulp mills in the forests of New York, Vermont, and Maine. The railroads give them all equal rates to the great cities. When the big mill at Millinocket, Me., was being planned the promoters went to the railroads for rates. To make the product cheap they must build on a large scale, and to justify this they must be able to reach many markets; they must be able to supply newspapers in Boston, New York, Philadelphia, and Chicago. So the railroads gave

them rates that enabled them to send their paper 1,500 miles to Chicago and sell it to newspapers there at the same price they would have to pay for paper that came only 500 miles.¹² This destroys nature's discriminations due to distance, and places men on an equality in the market to win by their merits, not by natural advantages or disadvantages of location. This is in many ways a beneficent process and if the railways did not create new artificial discriminations of their own they would be entitled to be placed among the great equalizers of the age.

Years ago there was a vigorous argument about the rates on wire from Worcester, Mass., to Chicago, and from Pittsburg to Chicago. The wire mills of Worcester had a good business, employing some 5,000 men, and marketing mostly in the West. Mills were built in Pittsburg, and being much nearer Chicago got a lower rate to that city. The New York Central at once met the rates so that the Worcester Mills could get to market on a level with the Pittsburg people, who still had the advantage of nearness to the coal and iron mines. Not satisfied with this, however, they carried the question to the Traffic Association, claiming that as they were 500 miles nearer Chicago, they should have a lower freight rate than the Worcester mills. But they didn't get it. The New York Central said: "Here are 5,000 men at work in Worcester. What are they going to do if we let you crowd them out of Chicago, which is their principal market? We shall stand by them and meet any rate you make from Pittsburg." That was fine, as good as the raising of a rate to kill the San Antonio mine was bad; the railroads can save industrial life as well as commit industrial murder.

It is said that government rate-fixing would not meet such cases; that the principle of equalization is not recognized, and both justice and business development would suffer thereby.

¹² Sen. Com. 1905, p. 975.

It is not true that government rate-fixers do not recognize the equalization principle. The national post-office has carried it to the limit, and has based its business upon it to such an extent that it is known as the post-office principle. It is applied in government telegraph and telephone systems much more fully than in our private systems. Even the State railways make considerable use of it. Although the tendency is to adopt some sort of distance system as the main basis of the tariff, there is constant recognition in Germany, Belgium, Denmark, Switzerland, and the Australasian States, and it is announced as a definite policy that so far as reasonably possible rival industries shall be placed on an equality in the market. "We mean to bring the manufacturer who is 100 miles away into the market on a level with the man who is 10 miles away," said the manager of one of these government systems to me, and there is more or less of the same spirit and purpose in all the government systems I am acquainted with. The fact is that a movement toward the equalization of rates through application of the principle to one commodity after another, or the gradual extension of zone distances in a zone tariff, offers the only hope of attaining a really just and scientific system of rates. Any sudden adoption of such a system would disturb the values of real estate, etc., beyond all reason, but it can be gradually approached, and that is what the railroads in this and other countries are doing.

Our Interstate Commission has, I believe, shown too little appreciation of this fact, too much tendency to insist that a town or city is entitled to the benefit of its geographical position. It is entitled to the benefit of its geographical position to the extent that no place more distant from its market should have lower rates to and from that market, but the right to claim that the rates shall not be equal is very questionable, and frequently it is clear that no such right exists. The Commission has recognized this point

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in several cases. For example, in the *Business Men's Association of St. Louis v. the Sante Fe, Northern Pacific, Union Pacific, and other roads*,¹³ the Commission sustained a blanket rate on many commodities from the Pacific Coast to all points east of the Missouri River. And in the *Orange Rate Case*¹⁴ decided last year, a blanket rate of \$1 per hundred on lemons from Southern California to all points east of the Missouri was approved. In the milk case, however, it held that "A blanket rate on milk on all the Delaware, Lackawanna's lines, New Haven road, Reading, Erie, New York Central, and West Shore and other roads regardless of distance, viz., 32 cents on milk and 50 cents on cream per can of 40 quarts, is unjust to producers and shippers of the nearer points. There should be at least four divisions of stations, — the first extending 40 miles from the terminal in New Jersey, the second covering a distance of 60 miles and ending about 100 miles from such terminal, and the third covering the next 90 miles, and the fourth covering stations more than 190 miles from the terminal. The rates on milk in 40-quart cans should not exceed 23 cents from the first group of stations, 26 cents from the second group, 29 cents from the third, and the present rate of 32 cents from the fourth group."¹⁵

It is quite possible that the Commission made a mistake in this case, though it is not easy for any but a railroad man, with a ravenous appetite for tonnage and reckless of the waste of economic power, to see any sense in arranging rates so as to take milk to New York from points near Buffalo while Buffalo gets milk from places east of points shipping to New York; but if the Commission did fall into error in this case, the mistake of refusing to allow

¹³ 9 I. C. C. Decis. 318, Nov. 17, 1902.

¹⁴ 10 I. C. C. Decis. 590; Rep. 1905, p. 31.

¹⁵ *Essex Milk Producers' Association v. Railroads*, 7 I. C. C. Decis. 92, March 13, 1897. See also *Howell v. New York, Lake Erie, and Western*, 2 I. C. C. Decis. 272, equal milk rates from all distances unlawful.

the distant man to come into the metropolitan market on equal terms with the nearer man is nothing compared to the mistake the railroads so frequently commit of allowing some Chicago or Kansas City man to come into New York at lower rates than the New York, Ohio, Pennsylvania, and New England producers have to pay.

In respect to the distance tariff question, Chairman Knapp of the Commission says: "I am very far from believing that there should be anything more than the most inconsiderable tendency, if any at all, toward the adjustment of rates on a mileage basis, and I think the prosperity of the railroads, the development of the different sections of the country and their industries, justify the making of rates upon what might be called a commercial basis rather than any distance basis; but do you realize what an enormous power that is putting into the hands of the railroads? That is the power of tearing down and building up. That is the power which might very largely control the distribution of industries. And I want to say in that connection that I think on the whole it is remarkable that that power has been so slightly abused. But it is there. . . . It comes back to the question which Senator Dolliver asked, are the railroads to be left virtually free to make such rates as they conceive to be in their interests? Undoubtedly their interest in large measure and for the most part is the interest of the communities they serve. Undoubtedly in large measure and for the most part they try as honestly and as conscientiously as men can to make fair adjustments of their charges. But suppose they do not. Is there not to be any redress for those who suffer? That is really the question. . . . Suppose it were true that a more potent exercise of government authority and the adjustment of rates tended somewhat to increase the recognition of distance with the result of producing a greater diffusion of industry rather than its concentration. . . . I cannot believe that all those institutions, laws,

administrations which operate to the concentration of industries and population are altogether to be commended. I doubt if they result in happier homes, better lives, greater social comfort."

A public board might not be willing to apply the equalization principle without limitation under competitive conditions. It might put the sash and door makers of Michigan and Vermont on an equality in New York City, and yet not think it best to enable the Vermont manufacturers to send sash to Michigan and Indiana points at the same rates the Michigan manufacturers pay, while the Michigan factories get the same rates to Vermont and Massachusetts points as the Vermont people; nor to arrange matters so that a train-load of bananas from the port of New York to Boston would pass a train-load of bananas going from the port of Boston to New York. It takes a lot of railroads working for profit, regardless of the waste of industrial force, to see the wisdom of such cross-hauling. A public board would be likely to recognize not merely the principles of profit, equalization, and development of traffic, but also the principles of economy from a national standpoint, the adaptation of special localities to special work, the value of diversification of industry, etc., etc.

It is entirely possible to avoid such mistakes as those attributable to the Commission in its geographical cases, and other mistakes that may come from lack of thorough acquaintance with practical transportation problems, by putting on the Commission two or three traffic men of high character and long experience in the business of making rates.

And as the business of the Commission would not be to make rates in the first instance, but only to revise them on complaint, much as the chief officers of railway departments do now, only with a public motive and point of view instead of a private one, there is every reason to believe that the work of revision could be intrusted to a well-

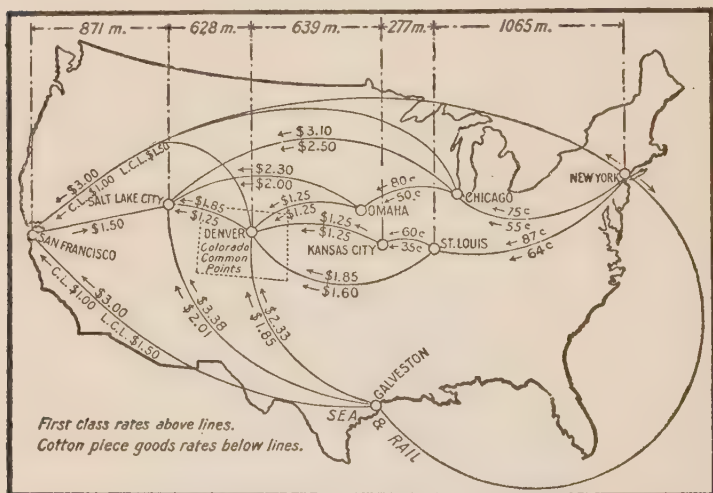
selected commission, with great advantage to the public. The very existence of an effective power of revision ought to go a long way toward making the use of the power unnecessary. And it is wholly just and practicable that monopoly charges should be subject to the veto of a public board that is in a position to take a broad, disinterested view of rates and other transportation questions.

How superior the Commission's methods are in many ways to those in use on our railways can hardly be appreciated by one who is not familiar with the unscientific, chaotic rate-making practices everywhere in vogue in this country, and also with the breadth and system that marks the work of the Commission.

An illustration may help to make the contrast clear. Take the case of *Kindel v. Boston & Albany*, and other railroads, decided by the Commission, December 28, 1905. The railroads were charging \$2.24 per hundred on cotton-piece goods from Boston, New York, and other eastern points to Denver, and \$1.50 on the same goods from the East clear through to San Francisco. The local rate from Omaha or Kansas City to Denver was \$1.25, the same as the rate on first-class goods, and the rate from the Atlantic to Denver was made by adding the said local rate to the rate from the East to the Missouri River. Kindel complained that the rate to Denver was unreasonable and unjust. The Commission carefully studied the facts, took into consideration the relation between cotton rates and first-class rates on various routes throughout the country, put the data on a chart, a facsimile of which accompanies this description, and came to the conclusion that "the exaction of first-class rates on cotton-piece goods between Missouri River points and Denver, in view of the long prevailing differentials in other parts of the country and other existing conditions, is unjust and unreasonable; and that the result of the excessive rate on cotton-piece goods between the Missouri River and Denver and the applica-

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tion of full locals in making up the through combination rate from New York, Boston and other eastern points taking the same rates to Denver is to make the through rate excessive, and that such through rate to Denver to be reasonable should not exceed \$1.50 per hundred pounds.”¹⁶



If the reader will examine the chart he will see that the cotton figures (which are placed below the route-lines) are less than the first-class rates (which are printed above the route-lines) in every case except between the Missouri River and Denver, and in some cases the cotton rates are only half the first-class rates. In view of the practically universal custom of the railroads in this relation, the deviation in the case of Denver amounted to a practical discrimination against that city and any shippers who desired to lay down cotton goods in Colorado. The railroads carried the goods from Boston to Chicago for 55 cents, while charging \$1.25 from Omaha to Denver, more than double the charge for half the distance.

Railroad rate-makers do not base their tariffs on broad considerations of justice, but get what they can out of the traffic for their own lines, while the Commission asks what rate will yield a fair profit, and will be just to the public and to the individuals and localities involved, considering all the circumstances and their relation to transportation conditions throughout the country.

At best, however, it cannot be denied that great inconvenience and some injustice might be inflicted upon the railroads by public rate revision. It seems to come down to the choice of the least of two evils. The President and the people say that if the railroads are left free to make the rates they do not deal fairly; experience shows that they discriminate unjustly between persons and places, and put some rates too high and others too low. The railroads say that if a public board should make the rates the companies might not be treated fairly. Both statements are true. But it is clear that somebody must make the rates. And it is equally clear that there is no system of rate-making that will do perfect justice. I know of no railway minister or traffic manager in Europe or America who even dreams he knows of any method of rate-making that will do justice all round under present industrial conditions. The post-office principle may ultimately be applied to diffuse the burden of distance over the whole community, but it is not practicable at present. If then a certain amount of injustice is unavoidable, and we must choose between injustice to a small group of stockholders or to eighty millions of people, which alternative shall we accept? If there is no way to solve this problem that will not work injustice somewhere, shall it be to the little group of profit-makers or to the great public, the people of the United States?

Besides this quantitative comparison, there is a qualitative comparison that is still more weighty. Such injustice as may be done to the railways is merely a matter of diminished dividends on stocks, a very large part of which is

water; while the false rates and unfair discriminations made by the railway managers not only affect property interests many times greater than railway stocks, but deny equal opportunity and undermine morals, manhood, government, civilization, and progress, — values far higher than any financial items whatever. Moreover, it is not unlikely that a board constituted somewhat differently from the present one might eliminate most of the errors of the Interstate Commission as well as those of the railway. What are the causes at work in the case? The reason the Commission has made some injurious rulings is that they lack the thorough acquaintance with traffic conditions that the railway managers possess. And the reason the railway managers make rates that are contrary to public policy is that they are more or less influenced by motives that are antagonistic to the public interest. The Commission is disinterested; it has no wish or personal interest leading to unfairness either to the railroads or the public; its motive is right, but its knowledge is imperfect. The railway traffic managers, on the other hand, have much more perfect understanding of the transportation business, but their interest is not altogether in harmony with justice and the public good. Is it not possible to create a board that shall have the thorough knowledge of first-class railway experts, together with the high motives and unmixed interests of an honorable public commission or court, and so remove the chief causes that have worked injustice in the past?

It is possible that there may be another fair solution, — that the rates may be made neither by the railroads themselves nor by a body representing the public alone. As there are three partners in the railroad business, as in every great industry, — viz., labor, capital, and the public, — it may be regarded as a case for arbitration, or for decision, not by any one partner alone, but by a board representing all three partners. Should there not

be a board on which the railways have a right to representation, the workers being represented too, and the public also having fair representation upon the board? Then the decision would represent the co-ordination of thought and interest of the three great parties concerned in the railway problem. Perhaps such a solution would be superior in its justice to decision either by the railways alone or by a body representing the public only.

But it is clear that the final power to pass on transportation rates must rest somewhere. That railways are public highways, and transportation charges in the nature of taxes, are settled principles of law and economics. That governments have a right to regulate railroad rates is everywhere recognized. But how is the right to be effectively exercised? If legislative bodies attempt to exercise it directly, the lack of detailed information as to specific cases and the failure of elasticity and adaptation to the needs of business, urged against Commission work, would be emphasized a hundred fold. There is no way but to delegate the power to an expert board, not with the expectation of perfect justice, but of the greatest attainable justice.

The most important question of all in this connection remains to be considered, viz., would the possession of the rate-fixing power enable a regulative board to stop discriminations? Practically every rate question but one involves the question of discrimination. The exception is the query: "Are the total charges unreasonable?" It is conceivable that the relations of the various rates might be fair but the whole tariff might be pitched too high or too low; then the reasonableness of that tariff would be the only question on which action would be requisite. But in practice there are always some rates that are low enough, some too low, and some too high. And there are always two active questions in reference to any rate: 1. Is it fair in relation to the rates accorded to other persons, places, or commodities? 2. Is it reasonable? In other words, is it

such that if other rates stood in true relations with it the total margin of profit would yield a fair return and no more than a fair return on the investment? Both questions are very difficult, especially the latter. The reasonableness of each particular rate depends not only on its own individual circumstances, but on a comparison with all other rates and a consideration of the company's entire business. Difficult as it is, it would seem necessary to try to answer it in a broad way, at least in respect to the tariff as a whole, for the failure to answer it may mean unjust taxation of industry, inflation of capital values, dividends on watered stock, vast accumulations of wealth in the hands of railway owners, political corruption, and the whole train of evils that follow in the wake of industrial aggression. Yet deeply important as it is to secure reasonable rates, how futile it would appear to attempt to do it by means of a board making orders as to this, that, and the other rate complained of, but without power to revise the tariff as a whole, or to require any particular standard of service in return for the rate decided upon. For every cent cut off the rate by the Commission, the railways, if they are agreed to act in harmony, can easily withdraw two cents' worth of facilities. Suppose the Commission can fix a reasonable rate, what is the use of it unless it can schedule to its judgment a minute specification of the quantity and quality of service to be rendered in return for that rate? And it would have to schedule also the price level, the crops, and all the conditions of home and foreign markets and adjust the rate on a sliding scale, else the rate that is reasonable now may become very unreasonable in a few weeks or months from now. And if, instead of this patchwork, the public board attempts to revise the tariff as a whole and fix the services to be rendered, it will either get itself captured by the railroads or it will cripple railroad enterprise. Railroad men are not going to work with much spirit if you take the control of rates and service out of their hands,

and if you leave them control of either they will have you instead of your having them. It always means a struggle for mastery where a body that does not own seeks to control. The body that owns and has possession will evade, pervert, defy if possible, and if overborne will lose initiative and energy and take on the air of a conquered province.

The case is no better in respect to discrimination. In the first place it is clear that, as railroad managers have testified, it would be just as easy to cut rates made by a commission as to disregard the rates made by the railways and published by them and thereby made obligatory under the law. Mr. J. H. Hiland, head of the traffic department of the Chicago, Milwaukee and St. Paul, says: "I can cut a rate or give a rebate on a rate fixed by a commission just as easily as though I had made the rate myself."¹⁷ Mr. W. D. Hines, till recently Vice-President of the Louisville and Nashville, says: "The Townsend Bill made no provision whatever which looked to the prevention of rebates. It provided that the Commission should fix rates, but there would have been the same facilities and the same inducements to cut the rates made by the Commission as to cut the rates established by the railroads."¹⁸ President Tuttle of the Boston and Maine puts the case in this way. "A big shipper says to the managers of the A, B, & C railroads 'Give me a cut rate.' They refuse. Pretty soon all P's business is going by the X line. The A, B, & C folks notice that they are losing traffic and they say 'Look here, where's all that business we used to get? The X line is getting it all. P's got a concession over there!' Maybe he has and maybe he has n't, but you can't make those fellows on A, B, & C believe that he has n't. They

¹⁷ Sen. Com. 1905, p. 1339.

¹⁸ Sen. Com. 1905, p. 1165. The fact is that neither the Elkins Bill nor the Esch-Townsend Bill reaches the private car abuses or terminal railroads, or flying tariffs, or other evasive forms of discrimination, and neither adds much to the power of the Commission to deal with the subject. (See Sen. Com. pp. 2889, 2905, 2911).

go to P and say: 'What are you giving all your business to the X line for?' P says, 'Well, I asked you to give me a lower rate and you wouldn't do it.' He don't say he's got a lower rate on X, and maybe he has n't, but the effect on A, B, & C is the same as if he had. They say, 'What do you want?' P says, 'Give me 2 cents a hundred off the rate and I'll distribute my business as I did before.' So they give him 2 cents off and they get the tonnage."

Mr. E. P. Vining, a former railroad manager, says that the reduction of a rate found unreasonable by the Commission may result in new discriminations unless other rates are reduced in fair proportion.¹⁹ It is also clear that in many cases the reduction of other rates by the railroads may nullify the effect of the Commission's order in respect to the rate complained of. Take, for example, the railroads leading from the wheat belt to Minneapolis and to Milwaukee. Excepting the Chicago, Milwaukee and St. Paul the roads that lead to Minneapolis are not the same roads that lead to Milwaukee. The Commission found that the rates on grain to Milwaukee and Minneapolis subjected the former to undue prejudice and disadvantage, but if the Milwaukee roads were ordered to reduce their rates to a given level the Minneapolis roads could neutralize the order by reducing their rates below the said level.²⁰ In other words no mere right to designate a reasonable rate in place of a rate complained of and found unreasonable can prevent unfair discrimination between places.

Nothing short of a general rate-making power can do the work properly. Particular rate-fixing alone means patchwork and inefficiency, easy evasion and new discriminations in place of the old ones. On the other hand, to give a public board general power to revise rates would if effective be tantamount to taking possession of the railroads with-

¹⁹ Sen. Com. 1905, pp. 1675, 1676.

²⁰ See *Chamber of Commerce v. C. M. & St. P. Rd.*, 7 I. C. C. Decis. 1898, p. 510 and I. C. C. Rep. 1898, p. 24.

out compensation, and if ineffective would amount to little in the way of stopping discrimination. If the tariffs were made by or subject to the revision or approval of a public commission and the rates so made were enforced, the most vital element in the ownership of the roads would be made public. And if the rates were disregarded or the power not vigorously and intelligently exercised the evils we are considering would still continue.

CHAPTER XXXIV.

CAN REGULATION SECURE THE NEEDFUL DOMINANCE OF PUBLIC INTEREST?

It is questioned whether any form of regulation can overcome discriminations. One of the ablest members of the Interstate Commerce Commission said to me: "No, regulation can never stop discrimination." And the man who is regarded by many as the leading railroad expert in the country replied to my question in substantially the same way. "Regulation properly so-called cannot eliminate discrimination, though it may greatly diminish it."

What he meant was that a control strong enough to eliminate discrimination, would not be regulation, but ownership or quasi-ownership. So long as men representing private interests continue to possess control over rates and services they will continue to discriminate, for private interests demand discrimination. And if control of rates or services or both is placed in a public body, public ownership or quasi-public ownership is thereby established, for control is the essence of ownership. It makes little difference who has the title to a farm if I have the control of it and can determine the way in which the work shall be done and the price at which the crops shall be sold. The "owner" in such case is little more than a mortgagee—he has the interest on his capital, whatever I choose to allow him, and that's all. It would seem that if the people wish to control the railroads, they should buy them at a fair value, and not establish complete or quasi-owner-

ship without compensation, under the name of regulation and control.

This is an interesting line of thought, and philosophically has considerable force in respect to control extending beyond what the public may have a right to claim as a partner by reason of the bestowal of franchises and other benefits. It is also important to note that only substitution of managers owing allegiance to the public interest in place of managers representing private interests can eliminate the motives to discrimination, and remove the antagonism of interest between the owners and the public, which is the root of all railroad evils.

This is a practical world, however, and the practical facts are that the difficulties in the way of public ownership of railways in this country at present are very great, and that much good may be accomplished by judicious regulation. The long and short haul clause may be made effective; the railroads can be prevented from paying shippers more for cars or switches than they would pay each other; private car-lines, express companies, and water carriers can be brought within the Commerce Act; the Commission can be given power to name a reasonable rate or practice in place of one found unjust, and either put it in force at once, subject to revision in a special court devoted to transportation cases, and acting promptly on all appeals, or themselves take the facts and their conclusions at once to the court and get a ruling before putting the order into effect; and railroad managers can be prohibited from having any interest in any concern that can be aided by transportation favors over their roads, as is already the case on James J. Hill's Great Northern, except with respect to Mr. Hill himself.

Besides all this it may be possible to make the law so clear that the courts cannot twist it out of shape, and the States might be got to pass laws in complete harmony with the Federal statutes. Railroads and trusts can be subjected to public inspection, and to the pressure of damage suits,

injunctions, and progressive taxation. If need be the public could demand representation on the boards of direction of all the railroads, or the traffic managers could be made public servants and required, as receivers are now, to report semi-occasionally to the Federal courts, and to State courts also, perhaps, with the power of judicial removal in case of misconduct. There is a practical warrant for demanding representation in the management of the roads, in the fact that the franchises bestowed on them by the public represent a large part, probably half, of their market values. The public is entitled, as we have said, to be regarded as a partner in the railroads.

If after thorough trial, regulation proves insufficient or unsatisfactory, public ownership remains.¹ The movement of thought in that direction in the last few years is very remarkable. In whatever way relief may come, whether by regulation or public ownership, *the essential fact is the dominance of public interest over private interest at the points where private departs from public interest, and the essential instrumentality for the realization of this fact in a republic is the actual, complete, and continuous control of the Government by the people.*

That unjust discrimination in railroad rates and service can be abolished, we know from the experience of other nations. Studying the railways of ten countries on the ground, examining the railway literature and talking with leading authorities of twenty-six countries, and analyzing the writings of the principal critics of the various systems, I find that the railroads of the United States are unique in two respects — the efficiency of the service they render, and the extent and viciousness of the discriminations they make. If efficiency

¹ The reasons for and against public ownership of railroads are dealt with in the testimony of the writer before the Industrial Commission, vol. ix., pp. 123-193, 883-890. President Roosevelt had the possibility of public ownership in mind when he said in his message that we must choose between an increase of existing evils, or increased Government supervision, or a "still more radical policy."

and injustice were essentially related, we might look with some degree of leniency on the evils of railway favoritism, though the wise would prefer justice even at the sacrifice of some degree of efficiency. But there is no such relation. Efficiency is due to national characteristics and economic conditions. In Italy I found the least efficiency coexisting with the greatest development of railway favoritism that I discovered anywhere in Europe, while the German roads are highly efficient and absolutely free from favoritism. All over Europe shippers and railway men assured me that no concessions could be obtained on the German railroads, and that they were the best managed roads in Europe. The railways of France and England are less efficient than those of Germany, and are tainted with discrimination to a degree that is insignificant compared with the phenomena in that line over here, but is very emphatic when compared with the German standards. The press of Great Britain has for years been holding up the management of the German roads as a model to be followed in England, and attributing the success that Germany is having in superseding English goods with her own in many leading markets to the efficient and far-sighted policy of her railway management.

There does not seem to be any clear connection between efficiency and the form of ownership. The private roads of America are the most efficient and the private roads of Italy² the least efficient I have examined. The public roads of Germany and Belgium, though less efficient than our private roads, are more efficient than the private roads of France and England. In the same country, under like economic conditions, either private ownership or public ownership may secure the best management and most efficient service according to the stage of development. In the United States under existing political conditions the

² The railways of Italy were operated by private companies when I was there; since then, in 1905, the Government has undertaken the operation of them.

managers of our railways have many facts on which to base an argument that Government operation of railroads would be less efficient than private operation; and the fact that our adverse political conditions are due in large part to the private ownership of public service monopolies does not destroy the whole force of the argument, since our rings, bosses, party machines, spoils system, etc., are due in part to other causes. But where public affairs can be managed with the purity and business sense that characterize the railway managements of Germany, Belgium, Denmark, New Zealand, and South Africa, there is equally little reason to doubt that public operation is the more economical and efficient.

The low average freight rate in the United States is often adduced as conclusive proof of the efficiency of private management. But the average freight rate in England and France is higher than in Germany or Belgium.

If it is a valid argument to say that the low average freight rate in the United States under private ownership proves the case as against the higher average freight rate under the public systems, then why is it not fair to say that the high rates in Great Britain and France under private ownership in their turn prove the case for public ownership. The average passenger rate in the United States and in Great Britain is twice as high as in some of the public systems of the continent. If the low freight rate proves the case for private ownership, why does n't the low passenger rate in Germany and Belgium prove the case for public ownership? The fact is that such comparisons of average rates prove nothing as to the management. Differences in the density of traffic, grades, curves, length of haul, wages, capitalization, etc., enter as plural causes and make it impossible to ascertain the effect of the element under consideration. Mr. Fink found that the ton-mile cost varied eightfold on different lines in his own system, all under the same management — 700 percent more in some cases than

in others. In view of that fact, of what use is it to try to draw inferences from the average rate?

Underneath our low average freight rate there are not only vast masses of low grade freight, coal, iron, lumber, etc., on very long hauls, but a traffic of great density between the great cities, and innumerable discriminations in favor of big shippers and big cities. Local rates in many rural districts are very high, almost as high in some cases as in the old stage-coach days. Labor is more efficient in this country than in Europe; for example, it takes, according to Mulhall, 2 men in England; 3 in France or Germany, and $4\frac{1}{2}$ in Europe on the average, to produce the same agricultural product as 1 man in the United States. In manufactures and construction work the ratios of efficiency are nearly the same; 1 man in the United States does almost as much as 2 men in England, 3 in France or Germany, and 5 in Italy or Hungary. Again our Government subsidizes the railroads by paying very large sums for the carriage of mails, while in Europe the railways are required to carry the mails free or for a very small payment. Moreover our railway capitalization, though larger than it ought to be by the amount of watered stock and fictitious securities, is nevertheless considerably below the capitalization of European roads. In the United States, the railways were mostly built through a new country thinly settled in comparison with Europe, and in many cases not settled at all. The right of way cost practically nothing as compared with the cost in Europe. The Government aided the construction of a number of giant systems by enormous grants of land and loans of money. Few roads were built that did not receive large donations from the cities and towns which they pass. And the abolition of grade crossings and other safety requirements in Europe entail vast expenses from which our roads are comparatively free.

If Government operation were established in this country under good political conditions and reasonable safeguards

that would secure efficient management, rates could be lower than they are now; for hundreds of millions that go for profits on watered stock, legislative and legal expenses, exorbitant salaries, competitive advertising, and agencies, etc., etc., would be saved. The abolition of free passes and freight concessions would permit a further reduction of the tariff; so that the published rates the general public would pay could be much lower, and even the ton-mile average would be somewhat lower than at present.

CHAPTER XXXV.

HINTS FROM OTHER COUNTRIES.

GERMANY tried private railways for 25 years, and Austria tried them over a quarter of a century, and they have tried the two methods side by side ever since the public system was organized. In New Zealand, also, and Australia the two systems have been tried side by side. And in every one of these countries where they have thoroughly tried both systems the conclusion by an overwhelming consensus of opinion is that public railways serve the public interests best, and also make lower rates and serve the people at less total cost. Switzerland, after a careful study of both systems in various parts of the world, came to the same conclusion, and her people voted 2 to 1 to transfer the railways to public ownership and operation. All this is very strong evidence, and if we turn from the tangled web of an international comparison of averages and look at the principles and causes at work in the case, it will be clear that public ownership tends to lower rates as well as to conserve the higher wealth.

In the same country and under similar conditions otherwise than in respect to ownership and control, public ownership tends as a rule to make lower rates than private ownership. This tendency results from the fundamental difference of aim between the two systems. Private monopoly aims at dividends for stockholders; public ownership aims at service for all. A normal public institution aims at the public good, while a normal private monopoly aims at private profit. It serves public interest also, but such

service is incidental, and not the primary purpose. It serves the public interest so long as it runs along in the same direction and is linked with private profit, but when the public interest departs from or runs counter to the interests owning or controlling the system, the public interests are subordinated.

The conflict between public and private interest is specially strong in the matter of rates. The rate-level that yields the greatest profit is much higher than the rate-level that affords the greatest service, or the greatest service without deficit; and since private monopoly aims at profit it seeks the higher rate-level. Public ownership aims at service, not at profit, and therefore gravitates to the lower rate-level, where traffic and service are greater.¹

¹ A few illustrations of the vigorous manner in which this law works out in practice may be of advantage here:

The Hungarian Government at a single stroke, in 1889, reduced State railway fares 40 to 80 percent. Austria and Prussia have also made great reductions in railway charges. Belgium started in the thirties with the very low rate of $\frac{4}{5}$ of a cent on her public railways. In New Zealand and Australia also the Government managements have adopted the settled policy of reducing railroad rates as fast as possible.

When England made the telegraph public in 1870, rates were lowered 30 to 50 percent at once, and still further reductions were afterwards made.

When France took over the telephone in 1889, rates were reduced from \$116 to \$78 per year in Paris, and from \$78 to \$39 elsewhere, except in Lyons, where the charge was made \$58.50.

Private turnpikes, bridges and canals levy sufficient tolls to get what profit may be possible; but when the same highways, bridges and canals become public the tolls are often abolished entirely, rendering such facilities of transportation free, and when charges are made they are lower than the rates of private monopolies under similar conditions, and generally reach the vanishing point as soon as the capital is paid off or before.

When Glasgow took the management of her street railways in 1894, fares were reduced at once about 33 percent, the average fare dropped to about 2 cents, and 35 percent of the fares were 1 cent each. Since then further reductions have been made, and the average fare now is little more than a cent and a half; over 50 percent reduction in 6 years, while we pay the 5 cent fare to the private companies in Boston and other cities of the United States the same as we did 6 years ago, instead of the $2\frac{1}{2}$ cent fare we would pay if the same percentage of reduction had occurred here as in Glasgow.

There need be no hesitation, therefore, on economic grounds about pressing toward the dominance of public interest, either in the form of regulation, or, when political conditions justify it, in the more complete form of public ownership. And this dominance of public interest is the only thing that can eliminate unjust discrimination and establish an impartial railway service.

The State railways of Germany, Austria, Switzerland, Belgium, Denmark, and the Anglo-Saxon republics of South Africa and Australasia are absolutely free from unjust discrimination. There are no complaints or suspicions on that score. Shippers know to a certainty that their rivals are paying the same charges that they are. Even the most strenuous opponents of public railways do not accuse them of favoritism. The railways privately operated in Holland, Denmark, Sweden and Norway, are also free from discrimination. Thorough public control, natural honesty, and lack of overwhelming temptation have combined to produce a pure administration. In Prussia, the Government, strong as it was, did not succeed in preventing discrimination on the private railways. President A. T. Hadley, of Yale, says: "Where the system of granting special rates becomes deeply rooted a great many are given without any principle at all, through the caprice or favoritism of the railroad companies and their agents." The revelations made before the Hepburn Committee, as to the practice of railroads in the matter of secret rates were simply appalling. This is the most indefensible part of the whole system of

According to Baker's Manual of American Waterworks, the charges of private water companies in the United States average 43 percent excess above the charges of public waterworks for similar service. In some states investigation shows that private water rates are double the public rates.

For commercial electric lighting Prof. John R. Commons says that private companies charge 50 to 100 percent more than public plants.

We could offer many other illustrations of the law that public ownership tends to lower rates than private monopoly, but this discussion may be sufficient to indicate the complexion of the facts.

railroad management. It is characteristic that Bismarck, who always chose his fighting ground with skill, made this a main base of operations in his contest against private railroad policy in Prussia. The Prussian Cabinet in the argument for the nationalization of the railways submitted to the Parliament in 1879 made the following statement:

"The principles of the publicity of the rates and the equal treatment of all shippers which are embodied in the railroad legislation of all countries, are liable, as experience has shown, to be circumvented on account of the competing interests of the railroads, and also by individual interests which have influence with the managements. The granting of these secret advantages in transportation in the most diversified ways to individual shippers, and in particular the so-called rebate system, is the most injurious misuse of the powers granted to railroad corporations. It renders government control of rates impossible, makes the competition between the different lines, as well as that of the shippers dependent on them, dishonorable and unfair, carries corruption among the railroad employés, and leads more and more to the subordination of the railroad management to the special interests of certain powerful cliques. It is the duty of the government to oppose this evil, to uphold the principle of the equal treatment of all shippers, and to enforce the legislative regulations on this subject. The importance of this problem is only equalled by the difficulty of its solution."

The problem was not solved till the railways were nationalized, and then discrimination disappeared completely. I was not able to find a shipper in Germany nor anywhere in Europe who knew, or had heard or had even a suspicion, of the granting of any rebate or concession of any kind by the German roads. Many of them did not stop with negative statements but asserted positively that concessions could not be obtained. The nearest I came in my search for a German fraud was the discovery of

an English-Italian fraud on the German roads. Leading business men in Italy told me that while they could get no concessions from the German roads directly, they could do it indirectly on transcontinental shipments by means of a trick of the English traffic managers. They made their bargains with the English manager, and he would pay a fictitious claim for damages in transit, and then write the German office that he paid so much for damages to the goods and that as it was not known in what part of the journey the goods were injured the German system must stand its part of the loss. They have to resort to fraud to get a discount on the German railways. The principal motives to discrimination are absent and the dangers to the guilty official are very great. His employers, the railway management, and the Government back of it, are unalterably opposed to the granting of unjust favors to any shipper. If a traffic man should depart from the path of impartiality the public examiners would be certain to find it out, and the traffic man would lose his job. The railway management is in the closest touch with the people through the local and national councils representing commercial bodies, labor, manufacturing, agricultural, and other industrial interests. The law requires the railway managers to consult these representative councils, and their recommendations as to rates, time-tables, and other matters of public interest are carefully considered and acted upon so far as reasonably possible.

In France the first railway manager I asked about secret discriminations said: "There is no such thing in France. The criminal law is very severe and it would mean imprisonment. There were complaints of favoritism a dozen years ago, but there have been none in recent years." Other railway men told me substantially the same thing. But very different ideas were expressed by representatives of shipping interests and others. Here are some of their statements: "The railroads hold manufacturers and mer-

chants at their mercy. They favor the great, and put the burdens on the little fellows. The tariffs are full of special rates, and 80 or 85 percent of these special rates are made simply for some favored merchant or manufacturer. The minister can reject or approve a tariff as a whole, but has no detailed power over one bad rate. If he retires a tariff the old one comes into effect. It is true that complaints are not made. What is the use? The danger is too great. Where is the merchant who dare undertake a campaign against the great companies?" I was assured that the statement of M. Cawes, vol. iv, p. 136, of the "*Cours d'Économique politique*," was still true: "The benefit of reduced tariffs is accorded upon secret approaches and solicitations; the companies dispense at their will industrial prosperity and ruin." The discrimination between localities is very great, owing largely to the way in which the railways are laid out. And "the companies defeat the national protective tariff by letting foreign goods ride more cheaply than French goods." For example, American wheat from Havre to Paris pays 18 francs per ton, while French wheat from Ferte-Bernard to Paris, 37 miles less distance, pays 20 francs a ton. If the nation desires to favor the importation of foreign products, well and good, but it is a curious state of things for the Government to adopt a protective policy and then permit private railways to reverse, overrule, and nullify that policy.

We have already had occasion to throw a side light on English railroad methods in describing the way in which Italian rebaters use the elasticity of the English railway system to get fictitious damages. I had to go to Italy to find the true character of the English railway conscience. The railway men in England won't tell. And nobody else, who will tell, knows. Yet the English traffic man, though willing to pay fake damage claims on proper occasions, is innocent of "flying tariffs," terminal railway abuses, systematic underbilling, classification jugglery, and other

preferential paraphernalia that belong to an up-to-date railway system over here. The last case of personal discrimination in rates that caused any stir was tried about 6 years ago and the preference was so small that one of our trust magnates, used to looking at large concessions, would not have been able to find it without a microscope. Nevertheless a considerable number of complaints (more than a hundred a year on the average) came before the Board of Trade and the Railway Commissioners under the traffic acts of 1888 and 1894. The Secretary of the Board of Trade tells me that these complaints relate chiefly to "high rates, poor facilities, and discriminations." About half the complaints charge excessive rates which amount in most cases, on the face of the complaint, to discrimination between places or commodities. A large number of complaints concern higher charges for short hauls than for longer hauls on the same line, and another large group allege disproportionate charges or higher rates for shorter distances as compared with the rates on other lines. A fourth group, containing about 25 percent of all the cases, includes complaints of delay, overcharges, refusal of facilities or privileges accorded others, personal preferences in rates, etc. For example the London and Northwestern charged the complainant 12 cents a ton up to 20 miles for hauling coal, while charging the complainant's competitors only 9 cents. Preferential treatment was alleged in the rates given to rival shipping companies for the conveyance of goods from Hull to places in Yorkshire. A coal shipper complained that the Midland Railway had for many years made a practice of allowing a rebate of 6 cents a ton to large dealers, and that in the lists of rates furnished the complainant no mention was made of this rebate or allowance, though other rebates were mentioned. The Midland replied that the system had been in operation since 1889, when the company gave notice as required by law, in the public rate-books, that they would

allow a rebate to traders whose annual tonnage exceeded 25,000 tons.

The English law does not object to the paying of a commission on a large amount of traffic provided the same discount is given to all shippers who attain the stated volume of business, but a higher commission to one big shipper than to another big shipper is vigorously repressed. A case of this kind was decided by the Railroad Commission in 1901. The court found that the Midland Railway had given Rickett, Smith & Company, coal dealers, a preference of $\frac{1}{4}$ of one percent in rebates on their annual traffic account, and it enjoined the railway and allowed damages to the complaining shippers. Some 75 suits were entered by different shippers for this one cause. In the same report 28 cases are listed relating to discrimination in brewery traffic, and 16 other applications for injunctions against undue preference in respect to facilities, rates on coke, brick, flour and grain, and other commodities to certain shippers or particular places, and one request from the Inverness Chamber of Commerce for an order enjoining the railways from selling season tickets to big shippers (with a traffic worth \$1,200 to \$5,000 or more a year) at lower rates than they will sell them to ordinary passengers. This last application was dismissed by the court. England does not object to premiums on volume, provided all shippers of equal size receive the same treatment. That's the principle the Trusts believe in; if vigorously worked the principle is a powerful trust builder.

The English Commission has power to enjoin undue preference in rates or facilities and give damages for the same, to fix reasonable charges in some cases, and to order rates increased since the revision of 1892 to be reduced to the previous level on proof of unreasonableness.

In the last report at hand, dated 1903, and relating to the year 1902, there are 270 odd cases, 95 of which charge undue preference, and as these matters come first before

the Board of Trade, which does not grant an appeal to the Commission unless it believes there is cause of action, the probability is that all or nearly all of these applications are based on a real discrimination.² It appears that 72 of the suits are for damages growing out of the Rickett rebate case; the rest are scattering. A few examples will show their character: 1. Application for order enjoining railways to desist from undue preference to complainant's competitors through rebates on flour. 2. For injunction against railways granting preferences to the firm of Leethan & Sons on their traffic. This case was tried, the preference found, and the injunction granted. 3. Undue preferences to certain manufacturers of pig iron in the rates on coke. 4. Undue preference to a certain shipping company through superior facilities and lower rates than were given to others on the same goods and the same routes. Case settled before trial. 5. Undue preference to Corral & Company by rebates on coal to certain stations while refusing to make the same allowances to other shippers. 6. Charging higher rates than E. on coal to the same point. Case tried, undue preference found. 7. Refusal of allowances for cartage made to others. 8. Refusal to supply cars in due proportion. 9. Preference of competing millers and subjecting traffic of applicant to undue prejudice. 10. Preference of brewers at Burton and Lichfield by low rates and terminal allowances. 11. Preferences in favor of brick-makers in Nuncaton and Tamworth by assessing the weights of their bricks lower than the bricks of complainants. 12. Allowing 93 cents a ton for services in loading and unloading, etc., and refusing similar

² The sixteenth annual report of the Commission, dated 1905, and covering the year 1904, has come just in time for a note before the galleys are made up into pages. Of the 103 suits entered before the Commission in 1904, about a quarter (25) relate to undue preference, rebates, refusal or neglect to afford such reasonable facilities as were accorded to others under similar circumstances; and most of the other cases, charging unreasonable rates, etc., were really based on some element of unjust discrimination in one form or another. (See Appendix B.)

allowances for similar services by other shippers. 13. Undue preference through higher rates on coal for domestic use than on coal for export, etc.

The English Railway Act of 1888 provides that "no railway company shall make any difference in the tolls, rates or charges made for, or any difference in the treatment of home and foreign merchandise, in respect of the same or similar services." But this part of the law has been constantly and vigorously violated as we shall see in a moment. The main aim of the English Government has been to keep the railways from lifting the rates or overcharging, and it has carried this to a point which, with the strenuous provisions against grade crossings and in respect to fencing and other safety measures, has gone far to discourage English railway development. The companies submit classifications and schedules of maximum rates and charges to the Board of Trade, which hears all objections and tries to arrive at an agreement with the companies. The agreed tariffs, or, in cases where no agreement is reached, the tariffs the Board thinks ought to be adopted, are embodied in Bills, introduced to Parliament, and after hearing if need be enacted into law. Thus Parliament enacts a tariff of maximum charges, and the law forbids discrimination, and "whenever it is shown that any railway company charges one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, or lower tolls, rates, or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company." The long-haul abuse is met by a provision free from any ambiguous "similar circumstances and conditions" clause. "The Commissioners shall have power

to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway." Section 31, provides that if any person believes a railway is making an unreasonable charge, or treating him in any respect in an oppressive or unreasonable manner he may complain to the Board of Trade, which shall endeavor to settle the difficulty by conciliation and arbitration. If this is not possible, and the case comes within the jurisdiction of the Railway Commission the Board will give the plaintiff a certificate to take the matter before the Commission for adjudication. Under Section 1 of the Act of 1894 complaints may be made of the unreasonable increase of any rate, directly or indirectly, since December 31, 1892, and if the Board cannot effect an amicable settlement the complainant may submit the case to the Railway Commission for judgment. Some Northampton traders at once began proceedings under this law, and after 2 years of litigation at a cost to the plaintiffs of \$10,000 they got a verdict, but the companies declined to accept the case as a test, so that any one who feels aggrieved by an excessive rate must spend the time and money necessary to carry his case through the Commissioners' Court to a decision.

The Board of Trade reports to Parliament every few years all the complaints presented to it and the disposition thereof. By the last report at hand, issued in 1902 and covering the years 1899, 1900, and 1901, it appears that nearly 3,000 complaints (2,946) have been filed from 1888 to 1902,—2,032 related to "unreasonable increase of rates" since 1892, and in 101 of these cases, when no amicable settlement could be made, the Board gave certificates of appeal to the Commission, but only a few of the complaints were carried up. Complaint of excessive rates

(not cases of increase) numbered 423, 88 of them in the last 3 years reported: higher charge for shorter distance than for a longer haul on the same line, 66, 11 of them in the last 3 years; disproportionate rates, or higher charge for a given distance on one line than on another 157, 37 of them in the last 2 years; and 268 miscellaneous cases, 95 of which were entered in the last 3 years. About 4 percent of the complaints relate to canals, the rest are railway cases. It takes 50 large pages to state the 325 complaints entered in the last 3 years. A very large part, practically all in fact, are either in form or in substance, cases of discrimination; even in complaints of excessive rates the gist of the charge is usually that the rates complained of are excessive as compared with other rates the companies make.³

A few further concrete illustrations from recent years may be of interest. 1. Refusal of free cartage to a manufacturer though another mill further away had the benefit of free delivery. 2. Refusal of allowance for loading, etc., on private siding though such allowance was made to a rival firm. 3. Rates on coal from mines at Leigh and Abram to Winnington, 26 miles, were 50 cents a ton against 42 cents from the mine at Haydock, 29 miles. 4. Complaints of delay, insufficient facilities, etc. 5. Fourteen complaints of increased charges for conveyance of small parcels in freight-train transportation and that companies were not following a decision of the Railway Commission. One of the complaints on the ground just stated was filed against the railways generally by the Co-operative Wholesale Society with practically 10,000,000

³ While this book is on the press, the eighth report, covering 1902 and 1903, has come to hand. More than half the 180 new complaints filed in the 2 years directly relate to questions of discrimination — undue preference, rebates, denial of facilities accorded to others, excessive charges as compared with other rates, etc., and nearly all the 180 cases involve discrimination directly or indirectly. (See Appendix B.)

people back of it in interest and sympathy. The companies revised the schedule and reduced the rates. 6. Refusal to grant complainant the same facilities for warehousing traffic as are granted to their competitors. The Board succeeded in removing the preference without trial. 7. A rate of \$11.25 on india-rubber goods from Birmingham to Newcastle-on-Tyne against \$8.95 on the same goods intended for export. 8. One shipper stated that he was charged \$9.75 for a carload of coal (6 tons) from Cork to Baltimore, while the Baltimore Fishery Schools were charged only \$5.10 for the same service. After the usual correspondence by the Board of Trade the matter was settled by the railroads agreeing to give the plaintiff the same rate as the Fishery Schools. 9. Another shipper alleged that since he had sent his traffic from Methven via the North British route from Perth instead of the Caledonian, the company had delayed his traffic at Perth while other traffic was sent on; that the company had deprived him of the use of facilities formerly enjoyed, and had stopped his credit. This reads almost like an American case.

The long and short haul cases also remind one of home in about the same ratio that a raspberry bush reminds one of a full grown oak. Both personal preference and the long-haul discrimination are comparatively rare in England. The greatest resemblance to America is in the rates on imports. The English railway manager has as good an appetite for foreign goods as any American manager, and in this matter the law does not tie him up as it does in so many respects with its maximum rates and large discretion in the Railway Commissioners to prevent excessive rates and undue preference. Foreign linen goes from Liverpool to London for \$6.10 a ton while home linen pays \$9.25 or 50 percent more. Foreign woolen and worsted goods are carried from Manchester to London for \$6.10, against \$9.75 or 60 percent more for English goods. Foreign

timber travels from Hartlepool to Wimeaton for \$3.12 a ton while English timber pays \$7.50 or 130 percent more. English dressed meats from Liverpool to London \$12.50 a ton, American meat \$6.25, just half the home charge. American cattle slaughtered at the wharf in Glasgow, \$11.25 to London, home beef, \$19.25. Cheese goes all the way from New York past Chelford and other English stations for less than the rate from those stations to London.

“Foreign hops are conveyed from Boulogne, via Folkestone, to London at \$4.37 per ton, while the charge from Ashford, on the same line of railway and much nearer to London, is \$8.75 — or just twice the amount for about half the distance. . . . The rates for imported butter, cheese, bacon, lard, and wool from Southampton Docks to London, distance seventy-six miles, is \$1.50 per ton. From Botley in the same county, and a similar distance, the rate for all these goods is \$4.80, or 219 percent more than for foreign stuff. The difference in rates between Southampton Dock station (foreign) and the Southampton Town station (home) is as follows: Hops \$1.50 and \$5; apples \$1.25 and \$3.22; pressed hay \$1.25 and \$2.50; eggs \$1.66 and \$5. Further, Professor Hunter showed that while French fruit is charged at the rate of $4\frac{1}{2}$ cents per ton per mile to London by the South Eastern, the same company charge Kentish farmers 11 cents per ton per mile, or more than double.”⁴ The *London Times* declares that “there are no arguments within the range of human ingenuity that will convince a Sussex hop-grower of the equity of an arrangement by which foreign hops are brought from the other side of the Channel for less than he has to pay to get across Surrey. . . . For nothing can shake the belief of the home producer, and in our view nothing ought to shake it,

⁴ From the *Progressive Review*, vol. II, no. 11, pp. 441, 442, where a number of facts relating to import rates are condensed from the testimony before Parliamentary committees.

in the argument that if these low rates pay the companies, he is shamefully overcharged, while if they do not pay, he is still overcharged to cover the loss and bring up the average."

It is evident that England is far from being free from unfair discrimination. A system of maximum rates, with penalties for undue preference, and a commission able to countermand an unreasonable increase of rates, is not sufficient.

In Canada a railway commission of three appointed by the Governors in Council for ten years (but removable at any time by the Governors in Council for cause) has absolute power over rates, classification, speed, safety appliances, etc.⁵ The railways may submit tariffs, but the Board can approve or disapprove of them in whole or in part, and prescribe such rates and classification as it deems best, and the railroads cannot charge either more or less than the rates authorized by the Commission. All undue preferences between persons and localities in rates or facilities is forbidden, but "the tolls for larger quantities, greater numbers, or longer distances may be proportionately less than the tolls for smaller quantities or numbers, or shorter distances, if such tolls are, under substantially similar circumstances, charged equally to all persons. The Board shall not approve or allow any toll, which for the like description of goods or for passengers, carried under substantially similar circumstances and conditions in the same direction over the same line, is greater for a shorter than for a longer distance, the shorter being included in the longer distance, unless the Board is satisfied that, owing to competition, it is expedient to allow such a toll." The burden of proof is on the company to show that any difference of treatment does not amount to an unjust discrimination. And "the Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances

⁵ See "The Railway Act" 1903.

and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this Act, or whether in any case the company has or has not complied with the provisions of this and the last preceding section; and may by regulation declare what shall constitute substantially similar circumstances and conditions, or unjust or unreasonable preferences, advantages, prejudices, or disadvantages within the meaning of this Act, or what shall constitute compliance or non-compliance with the provisions of this and the last preceding section relating to discrimination, long-haul," etc. No Supreme Court rulings can knock out this Commission, for it has clear authority in the law to interpret its provisions as it deems best, to accomplish the purpose in view. Whether this law will work well or ill is not yet apparent.

In Holland, where the railways are owned by the State and operated by private companies under lease from the Government, the Ministry assured me that unfair discriminations between persons and places do not exist, and I have every reason to believe they are right. The President of the Government railways in Denmark said: "There are no discriminations either on the public or company railroads. It would not be possible to give such favors in Denmark." And in reference to my description of some of the American methods of favoritism, he said that nothing of the kind had been attempted; and if it should be, every one concerned in the transaction would be punished, and the guilty officials would lose their positions.

Railway men and publicists of Norway and Sweden tell me that there is no discrimination. It would not be permitted. There are no provisions against it in the law. Nothing of the kind has ever been known.

A high official of the Japanese Government, whom I met in this country a few months ago, said in answer to a question in which I stated some of our discrimination

methods, large and small: "The government fixes maximum and minimum rates, and the companies are free between these limits, except that the Minister keeps control sufficient to compel fair rates if the companies should try to discriminate or otherwise make unjust rates. We have had nothing like the Beef Trust or Standard Oil discriminations you describe, nor any personal favoritism in rate-making, but the government means to prevent the possibility."

The railways of New Zealand are not troubled with complaints of discrimination, nor those of New South Wales or Queensland or Victoria. And in these boiling and bubbling republics, if there were the slightest suspicion of a reason for attacking the Government management on this ground, it would be done by the political opponents of the administrations. South Australia has had one case of alleged favoritism. The complaint was that the Railway Commissioner gave a reduced rate on carload lots of certain goods to certain points, to meet water competition. A shipper, desiring to send his goods at low rates in the opposite direction, asked the Commission to give him a reduction equal to that accorded on the traffic above mentioned. The Commissioner said he would give the same reductions if the shipments were made in carload lots. The complaining shipper could not do this, as his trade was not sufficient. The matter was brought before Parliament, and Parliament sustained the Commissioner. The Parliament of each of these republics acts as the people's board of directors of all public works, calling the managers to account; and any member, from the remotest rural district, can ask the Ministry and the railway management any question he chooses, and compel full disclosure of the facts. Secrecy is practically impossible.

The Government railways of Natal and Central South Africa are equally free from secret concessions and favor-

itisms of every kind. In talking with the manager of the Central South African Government railway, I explained the nature of the favors granted to the big shippers in the United States, using the Beef Trust, Salt Trust, Oil Trust, Fuel Company, etc., as illustrations, and said: "Suppose a big concern tried to get special rates or concessions of some kind on your railroads, and made a secret agreement with the railway management?"

"They could n't do it."

"Why not? Human nature is the same in South Africa as in America. Suppose they made some traffic man a partner in their profits or brought pressure enough on him in some way to get a concession?"

"It would n't be possible."

"Well, why? Suppose it were possible, what would happen?"

"The Government auditors would find it out, and the manager would lose his position."

"Could n't he cover up the thing?"

"Not for any length of time."

"The people would have a fit if anything like that were attempted," said a member of the manager's staff.

"You have no attempts to secure preference, then?"

"No it is not even attempted."

If those who employ and discharge the traffic managers desire discrimination or aim at results which can be forwarded by discrimination, then discrimination will exist unless the public control is strong enough to keep the big shippers and the people in possession of the railroads from carrying out their purposes.

If, on the other hand, those who employ and discharge the traffic men are sincerely opposed to discrimination and aim at results that can only be secured by just and impartial management, then the traffic man who is guilty of favoritism will lose his job, and the utmost possible discouragement is put upon unjust discrimination.

Once more the vital conclusions seem to be, the necessity of the dominance of public interest, and the value of being in possession or having your own servants in possession instead of merely giving orders to the servants of another in possession who may or may not obey, and who are in no danger of losing their positions by disobeying you and may gain greatly by it — the value of having public interest at the helm to steer the vessel in a safe course, instead of keeping private interest at the wheel while public interest stands on a steam tug with a big whistle and shouts orders through the fog to the steersman on the passenger liner who is more than half inclined to steer the ship as he pleases, and gets his pay and employment from men who do not wish the public orders carried out, and whose instructions vary widely therefrom. You cannot expect the servants of others to obey your orders as well as your own servants, especially if the said servants of others are employed by persons whose interests are largely contrary to your own. Neither can a commander be as sure of winning a victory at the head of an army trained in the camp of the enemy owing allegiance to them, and constantly receiving orders from them, as he could at the head of his own proper troops.⁶

Is it fair to try to control in your own interest property that does not belong to you? It is fair to try to exert sufficient control to secure impartial treatment of persons, places, and industries; but can this be done without fixing rates, and if this is resorted to will it not result either in squeezing the life out of railway enterprise or in a vicious struggle for mastery with new evasions of law and further intensification of political evils, and corporate control of Government? You will either deprive the owner of the right to determine the price at which the product of his plant shall be sold, thus controlling his profit and sapping

⁶ This and other phases of the problem relating to the comparison of private management, government control, and government ownership, are more fully dealt with in "The Railways, the Trusts and the People" by the same author. Oct. 1905, Equity Series, 1520 Chestnut St., Philadelphia.

his energy and incentive, or you will put a premium on political corruption by making it necessary for the railroad owner to control the Government in order to control his business and its profits. You will check the development of railways and drive capital into industries where the owners are free to fix prices, or you will check the movement toward political purity. Public control in some form is absolutely necessary in order to safeguard the public interest. The only question relates to the form and degree. Is effective and adequate public control of transport, with the unity, freedom, and hearty co-operation that should characterize all business ventures, possible without public ownership? And if not, is n't it true that the economic and governmental changes necessary to make public ownership safe and successful constitute the essence of the ultimate railroad problem?

If the railways were united into a national system under a great leader like James J. Hill, or A. J. Cassatt, free to operate the roads on business principles, untrammelled by the spoils system or any political control, backed by a public interest that would not tolerate favoritism, partyism, political influence or graft in any form, working with public aims and public motives instead of private aims and motives, managing the roads for the whole people as stockholders instead of for a small part of the people as stockholders, paid, in common with the whole body of employees, on the basis of a fixed remuneration plus an additional compensation proportioned to efficiency, and in constant consultation with local and national councils representing commercial, manufacturing, mining, labor, and agricultural organizations and interests, we should have a railway system and management whose efficiency would astonish the world, whose methods would bear the light, and whose administration would be an honor to twentieth-century civilization.

APPENDIX

APPENDIX

A.—THE COAL CARRYING DECISION, U. S. SUPREME COURT.

SINCE this book was put in type the United States Supreme Court has sustained the Interstate Commerce Commission in an important suit brought by the Commission against the Chesapeake and Ohio Railroad, and the New York, New Haven and Hartford Railroad under the Elkins Act. The Chesapeake and Ohio agreed to deliver at New Haven 60,000 tons of coal at an aggregate cost which, after deducting the market price of the coal at the mines and the cost of transportation from Newport News to Connecticut, would leave the Chesapeake and Ohio Railway only about 28 cents a ton for carrying the coal to Newport News, while the published tariff was \$1.45 per ton. Suit was brought by the Interstate Commission to enjoin the carrying out of this contract. The Government challenged the right of an Interstate carrier to perform a contract to sell and deliver merchandise (coal) whenever the price to be received by the railway is inadequate to cover its actual outlay, plus the published freight rates, upon the ground that the actual result would be discrimination and failure to collect the published tariff, in violation of the Interstate Commerce Law. The answer of the railway company was in effect that it charged the full rate for transportation, but sold the coal at less than market rates, at a price in fact which involved a loss, and that special circumstances justified it in so doing. The companies maintained that, when acting in good faith, they had, as dealers, the right to make

contracts at a fixed price for sale and delivery extending over a series of years and then go into the market, buy the merchandise, and deliver it at destination, notwithstanding that what they received therefor might not be sufficient to yield them a net sum equal to the published freight rate, according to which shippers generally were charged.

In a strong decision rendered February 19, 1906, the Supreme Court upheld the contention of the Government, declaring that a carrier cannot deal in the goods it carries in such a way as to evade the provisions of the Interstate Commerce Act, and therefore a railway cannot buy and sell and underbid other owners of similar goods who are dependent on the railroad for the transportation of their goods to market. "The existence of such a power would enable a carrier, if it chose to do so, to select the favored persons from whom he would buy and the favored persons to whom he would sell, thus giving such persons an advantage over every other, and leading to a monopolization in the hands of such persons of all the products as to which the carrier chose to deal. . . . Because no express prohibition against a carrier who engages in interstate commerce becoming a dealer in commodities moving in such commerce is found in the act, it does not follow that the provisions which are expressed in that act should not be applied and be given their lawful effect."

The Court quotes an English case, *Attorney General v. The Great Northern Railway*, in which the Vice-Chancellor decided on common-law principles that a railway could not deal in coal because such dealing was incompatible with its duties as a public carrier and calculated to inflict injury on the public.

The decision is important, and the railways, it is said, have already begun to part company with their coal mines. But it must not be expected that the evil at the bottom of this case can be so easily eradicated. It will be a simple matter to put the coal mines in the hands of special com-

panies controlled by the same men who control the railways, and the coal company and the railway can together continue to do precisely what the railway alone has been doing in the double capacity of dealer and carrier.

Within a week of its decision sustaining the Commission in the coal-carrying case, the Supreme Court has reversed the Commission and the Circuit Court in the orange routing case. In 1899 all the railways of Southern California fixed a through rate of \$1.25 per hundred on oranges from California to the Missouri River and the East, reserving the right to route the freight. The Fruit Growers Association complained of this as depriving shippers of their right to route their shipments and as virtually constituting a pooling agreement or combination in violation of the Interstate Act. The Commission and the Circuit Court sustained this contention, but the U. S. Supreme Court has now (March, 1906) sustained the railroad plea that they have a right to fix through rates on condition of determining the routing themselves.

B.—REGULATION OF RATES.

IN the Boston *Transcript* for February 24, 1906, President Hadley, of Yale University, criticises the Hepburn Bill because it makes "the decision of the Commission itself final on all questions of fact," and he predicts that if such a bill is enacted into law it will be a failure, although he does not believe it practicable to obtain a better measure now.

President Hadley bases his prediction of failure on his interpretation of the experience of England. He says that the English Railway Act, 1873, "had many points of resemblance to the Hepburn bill. It provided for a commission which, besides ascertaining the rates charged by railroads and making reports to Parliament concerning their management, should also be empowered to investi-

gate complaints concerning unjust rates of discrimination in facilities and give adequate and speedy relief. It was intended to have the quick jurisdiction of these Commissioners supplant the slow jurisdiction of the older courts."

"The twenty-sixth section of the act undertakes to restrict narrowly the opportunity for appeal from the judgment of the Commission. The Commissioners themselves may state a case; on the case thus stated, and no further, the courts on appeal may decide what is the law. This was intended not only to shut out the retrial of questions of fact, but to give to the Commission, as far as the circumstances admitted, the power of deciding which were questions of fact and which were not."

The Committee of 1883 is quoted as finding that "a case has been made out for granting to litigants before the Railway Commission a right of appeal," and we are told that the Committee were "all agreed that the attempt to prevent appeals from the Commissioners' decisions had been a complete failure."

President Hadley further says: "Parliament has abandoned the theory on which the act (of 1873) was based, because the courts did not carry out the law, but insisted on retrying questions in their entirety, instead of acquiescing in the attempt to separate the law from the facts."

And we are told that "the evil effects of the attempt to give the English Railroad Commission power of fixing rates did not stop here. The attempted performance of this duty took up so much of their time that they failed to perform other duties, which under more favorable circumstances they might have carried out efficiently and usefully. They did not have that influence on the formation of railroad tariffs which their experience and high position would otherwise have secured."

Now as a matter of fact the English law never attempted to give the Railway Commission power to fix rates, except a very limited power in relation to through rates when the

companies cannot agree, nor was it intended that the Commission should have anything to do with the "formation of tariffs." Rates are fixed, not by the Commission, but by Parliament with the advice of the Board of Trade. When Parliament orders a revision of the maximum rates, the railways and the Board of Trade try to agree on new schedules, and the Board embodies its conclusions in Provisional Orders or rate bills which are passed by Parliament with or without amendment as it sees fit. This was true in 1873 and has been true ever since. The Commission's duty in this connection was and is to hear complaints of undue preference, and rates alleged to exceed the maxima fixed by Parliament. If a through rate proposed by any company is objected to by any forwarding company, the Commission has power to allow or reject the rate subject to the limitation that it cannot require a company to carry at lower mileage rates than it is legally charging for like business on any other line between the same points. (Sections 11, 12, Railway Act of 1873.) The Commission may also determine the division of through rates if the companies cannot agree. Since the Railway Act of 1894 the Commission has jurisdiction under Section 1 to order a return to former rates charged by the company in case complaint is made of an increase above the rates charged in 1892 (the date of the last Provisional Orders or tariff revision), and the burden of proof is on the company to show that the increase is reasonable. This puts a limitation on the companies' rate-making power in addition to the limit of the parliamentary maxima, for no matter how much below the maximum a rate in actual use in 1892 might have been, it cannot be increased if the Commission on complaint and hearing forbids it.

Further, it is not the case that Parliament "abandoned the theory of the act of 1873" in the sense the reader might gather from the statements made by President Hadley. On the contrary, the Railway Act of 1888 (which

resulted from the investigation of 1882, quoted by Hadley) distinctly provides in section 17 that "no appeal shall lie from the Commissioners upon a question of fact." Subject to this provision an appeal was given to a superior court of appeal, the change being that under the old law the case went up on a statement by the Commission, which could therefore itself determine what were questions of law and what were questions of fact, while under the new law the case went up on the record and the court above determined what questions of law were involved. But the new law is exactly like the old in making the judgment of the Commission final on all questions of fact.

The truth is that England never attempted anything like the system of regulation embodied in the Hepburn Bill; never delegated to any commission the power to fix reasonable rates or make reasonable regulations in place of rates or regulations found on complaint and hearing to be unjust, but she has done and continues to do the other thing that President Hadley gives us to understand she has tried and abandoned, viz., the intrusting of power to a Railway Commission to render final decision on questions of fact.

In the *Transcript* of April 1, 1905, President Hadley says he "urged that a single hearing in the railroad court was better than two successive hearings by two different kinds of bodies. Mr. Hepburn's committee desires to avoid the double hearing, but it undertakes to do it by eliminating the court instead of the Commission. There is reason to fear that this plan will not work."

That may be true. There is reason to fear that no plan for government control of these giant interests will work so long as the ownership is divorced from the said control. As stated in the text, one of the ablest and most honorable of our railroad presidents, in answer to my question as to what would happen if the Interstate Commission were really given power to fix rates, replied, "The Commission

would have to be controlled, that's all." And when I quoted this to one of the leading members of the Interstate Commission his comment was, "I always said the railroads would own the Commission as soon as it was worth owning."

Even without owning the Commission the railroads can block it pretty effectually by secret practices, extensive forgetfulness on the witness stand, persistent persecution of shippers who make complaint, cunning evasions, and interminable litigation. It is quite likely the proposed regulation will not realize what is hoped for from it, but we cannot predict such failure from English experience as President Hadley does when he says, "The history of English railroad regulation shows that a similar measure, passed under closely analogous circumstances, failed to do the good which its advocates expected. The same failure is likely to be repeated in the United States." The Hepburn Bill in its scope and directness is very different from anything that England has attempted. It is quite likely that England may try some more vigorous measure than she has yet adopted, but in spite of all her efforts at regulation Mr. W. M. Acworth, the classic railway writer of England from the railway standpoint, corresponding to President Hadley in this country, told me a few months ago that dissatisfaction with the railway situation is so great in England that "9 out of 10 would vote for public ownership of the roads if the question were submitted to-morrow."

The general failure of regulation in England to accomplish what was expected of it, may suggest a broad conclusion as to this country, but a specific conclusion from any parallel to the Hepburn Bill is not possible, because no such parallel has been tried.

President Hadley thinks one hearing is enough, provided it is a hearing before a court, not before the Commission. Like the railroads, President Hadley has no use for the Com-

mission. The reason perhaps is the conscious or subconscious appreciation of the fact that rate-making involves a vigorous *administrative* element, which the Commission has shown a tendency to use with great effectiveness, while a body constituted as a court, by its very nature and traditions, is loath to exercise administrative power or in any way disturb its exercise by the companies except on the clearest kind of proof of the adequacy of the new rate or condition proposed, which cannot in many cases be obtained at all except by *bona fide* trial of the new rate or regulation, since a rate that is even below the present operating cost may develop traffic enough to give it ample justification. Courts do not like to trust to future proof. If rates do not seem justified on existing facts as shown by accounts presented by the companies, the courts are apt to turn the new rates down without a trial, as the United States Supreme Court did in the Nebraska case when the law of that State fixing rates on local traffic was declared unconstitutional. The companies made the division between through local costs to suit themselves, and the Court not only accepted their figures, but neglected to take into account the fact that lower rates might easily develop new traffic enough to cover the slight additional margin needed even on the companies' own showing.

President Hadley says: "What the United States needs is an act under which the Commission will take part in the making of tariffs and give effect to the public interest in the general questions of railroad management, leaving the specific cases of violation to be stopped or punished by the courts." Very good. But how is the Commission to take part in the making of tariffs? If it is to do any more than to give advice (the efficacy of which is nil when it comes up against the Beef Trust, Standard Oil, or other big private interest), it must have authority, general or particular, to fix rates when the railways do not make them just and reasonable. In England Parliament fixes maximum

rates on the basis of Board of Trade studies, and the commission acts as a court. The plan has not prevented either discrimination or extortion, but has taken the life out of the railways to a large extent. In this country it is proposed to try the plan of letting a public board fix individual maximum rates when injustice is shown. As there is an appeal to the Federal courts and as Hadley declares that the courts insist on retrying questions in their entirety, it would seem that the very system President Hadley advocates would really come into being under the Hepburn Bill, — the Commission will have a part in fixing the rates, and violations of law will really be determined by the courts.

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THE RAILWAYS, THE TRUSTS AND THE PEOPLE.

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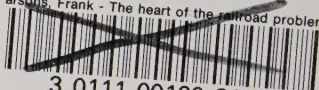
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